H.R. 3615; THE MUTUAL BANK CONVERSION ACT

 HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND DEPOSIT INSURANCE

OF THE

COMMITTEE ON BANKING, FINANCE AND
URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JANUARY 20, 1994

Printed for the use of the Committee on Banking, Finance and Urban Affairs

Serial No. 103–110

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H.R. 3615; THE MUTUAL BANK CONVERSION ACT

THURSDAY, JANUARY 20, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:11 a.m., in the Aldermen's Chamber, City Hall, 101 North Main Street, Winston-Salem, NC, Hon. Stephen Neal [chairman of the subcommittee] presiding.

Present: Chairman Neal and Representative Watt.

Chairman NEAL. I would like to go ahead and call this hearing to order at this time.

It is a real pleasure to hold this hearing of the Financial Institutions Subcommittee here in Winston-Salem. It is a little unusual. As you know, most of our hearings are held in Washington, and this is an unusual opportunity, and we appreciate it.

I want to thank Mayor Wood of Winston-Salem and the Board of Aldermen for letting us use these chambers today.

I want to thank my colleague in the House of Representatives, and also on the Banking Committee, Congressman Mel Watt, for joining me here. This hearing is actually being held in his district, so he is our host this morning. Mel, thank you very much, I appreciate your taking the time to join us.

As you may know, in the last year the once obscure issue of the conversion of mutual to stock savings banks has begun to attract some attention. In fact, my attention was drawn to it by an article that was in *Business North Carolina* magazine, which was sent to me by my friend and colleague in Congress, Martin Lancaster from down in the eastern part of North Carolina. That article that brought this issue to my attention and we started looking into it a little bit and thought that we should understand it better.

Under our rather byzantine bank regulatory system federally and State-chartered savings and loans and federally chartered savings banks are regulated by the Office of Thrift Supervision, the OTS, but State-chartered savings banks are regulated by the Federal Deposit Insurance Corporation, the FDIC.

The OTS has comprehensive regulations and long experience in regulating the conversion of mutual to stock form, having overseen over 1,100 conversions. The FDIC, on the other hand, does not regulate conversions, and leaves it up to the States to do so.

I note in passing that Treasury Secretary Bentsen has announced that he will shortly be sending to Congress a proposal to consolidate and simplify the confusing duplicative and overlapping Federal bank regulatory system. While I have some concerns with the details of his proposal, it is clear that we must do something to rationalize and simplify our bank regulatory system. It is a system which no one would have designed like this from scratch, but has grown ever more tangled over the past 130 years.

This subcommittee will take up the issue early this year, and I hope we can reform the system, protecting safety and soundness, but cutting out unnecessary duplicative regulation which prevents banks from tending to their main job of lending to help consumers and businesses alike.

But back to the immediate subject of our hearing today. Conversions of State savings banks is extremely popular, especially in North Carolina. At the beginning of 1992 there were no State savings banks in North Carolina. The legislature had just enacted legislation authorizing them, but none had yet been chartered. There were 61 federally chartered, and 55 State-chartered savings and loans in North Carolina.

Two years later the landscape is dramatically different. There are 20 Federal and 7 State-chartered savings and loans, but 55 State-chartered savings banks. None of the 55 is a new institution. Each and every one had a savings and loans charter.

Some of these conversions occurred so that institutions could avoid paying assessments to the OTS, and instead pay lower assessments to State regulators. The savings can run into tens of thousands of dollars.

Some may have wanted to avoid being called savings and loans, preferring to be called a savings bank, although they could have become a federally chartered savings bank long before North Carolina passed legislation, if that was their primary interest. But some of the conversions apparently occurred so that management could take advantage of more liberal State regulation of benefits to insiders.

Our hearing today will examine the degree to which State regulation of mutual-to-stock conversions is adequate to prevent insider abuse and protect the rights of the depositors of mutual savings banks.

Opponents of State regulation claim that lenient or lax State regulation allows insiders to profit from the sale of the institution. In so-called merger conversions, insiders are accused of selling control of the mutual institution they do not own to an acquiring bank to the detriment of the depositors of the mutual.

A merger conversion is one in which a mutual savings bank converts to stock form, and the stock in the savings bank is acquired by another bank. The depositors of the mutual, rather than being given an opportunity to buy the stock of the mutual, are given an opportunity to buy stock in the acquiring bank, usually at a discount from the listed price of the stock.

The management of the mutual savings bank often gets pay increases for staying on after the acquisition, and may receive stock or stock options in the acquiring bank. Often the acquiring bank

makes a cash contribution to local charities in the area served by the mutual savings bank that it is purchasing.

But there is a concern that a November 2, 1992 letter to all North Carolina mutual savings banks gave the signal that the State was declaring a hands-off policy on merger conversions. In the letter addressed to "Dear Manager and Board" the administrator wrote that, quote "This office remains convinced that free market forces should govern transactions such as this, and, accordingly, it should not impose its business judgment and/or arbitrarily limit the creativity of the marketplace. The terms of the transaction should not be subjected to second-guessing by this office."

The letter ended with a paragraph praising the institutions that the Savings Institutions Division is supposed to regulate and a cheery "Keep up the good work." I would ask unanimous consent that the entire letter be made a part of the record.

[The letter referred to can be found in the appendix.]

Chairman NEAL. Mutual savings and loans in North Carolina apparently got the message. By the end of 1993, 46 North Carolina mutual thrifts had converted to State savings bank charters, 30 percent more than in any other State. The question we face is whether there is effective State regulation of State savings banks, or whether Federal regulation is needed to protect the members and owners of State mutual savings banks to the same extent that Federal regulation protects the members and owners of State mutual savings and loans.

Our witnesses today will enable us to hear both sides of the issue as it relates to merger conversions. We will hear from depositors who believe that the directors and managers of acquired savings banks put their own interests ahead of their fiduciary duties to the depositors. We will also hear from managers of acquired institutions who believe that they maximized the return for depositors and acted in the best interest of the depositors and their communities. And we will hear testimony from the acquirers who will explain their strategies in making the acquisitions and structuring the incentives for management, depositors, and the communities as they do. Finally, the administrator of the savings institutions will present his views on the operations of his office in reviewing and approving these transactions.

At this time I would like to yield to my distinguished colleague and friend, Mr. Watt, for any comments that he may have.

Mr. WATT. Thank you, Mr. Chairman.

I am delighted to be here and welcome all who are not from this area to Winston-Salem, and particularly to this part of Winston-Salem which happens to be in the 12th Congressional District, and extend my thanks to Chairman Neal for both inviting me to participate in this hearing, and for putting the hearing together on this important issue.

I had a decision to make early in my tenure in Congress when I was fortunate enough to get on the Banking Committee, and that decision was whether I would try to get on the Financial Institutions Subcommittee, and it seemed to me that having Chairman Neal as the chairman of that subcommittee, and having both of us from the State of North Carolina would create some redundancy in my being on that committee, so I opted not to get on that sub-

committee, but have tried to make a concerted effort to stay abreast of the issues that that subcommittee deals with on a regular basis, and that is important because of the number of banks and financial institutions which happen to be located in my congressional district. They tell me that I have more banks than any other Congressperson in the United States, with the exception of Carolyn Maloney who represents the Wall Street district in New York.

The power and influence that Chairman Neal has is probably reflected in the fact that they have shut the entire Federal Government down today so that he could conduct this subcommittee hearing in Winston-Salem, so that gives you some appreciation of the power of a banking committee or subcommittee Chair.

I agree with Steve that this is an extremely important and timely issue to deal with, and it is an issue that I have actually been interested in, and been following in the newspapers for some time, and had some fairly close up experience with last year and year before last before I was elected—actually year before last now—before I was elected to Congress, because in the practice of law I had the opportunity to be involved in raising some issues. Many of the issues that are being raised about this conversion process were then being raised in the context of a mutual insurance company merger which I happened to be involved in, and essentially what was happening was that the top management of the company which was being taken over had negotiated a merger or transfer of all assets into a larger company, and the interest of the mutual insured in that case, which is very similar to the depositors in the savings and loan context, were not necessarily at the forefront of that merger.

So I got the opportunity to hear arguments on all sides of the issue from the management of the company that was being taken over, from the management of the company that was acquiring the North Carolina company, from the insureds in that case which would be equivalent to the depositors in this analogy, and found that there are a number of interests involved in a merger, or a conversion or an acquisition which must be taken into account, and so I think I have some appreciation of the fact that there has to be a balancing of those interests in the merger context.

I am delighted to be able to be here today and to listen to witnesses who hopefully bring the perspective of all the competing interests, or all the interests that need to be accommodated in a merger, as well as can shed some light on the extent to which it would be proper or desirable to have regulation of that process.

Again, Chairman Neal, I express my thanks to you, and look forward to hearing the witnesses on this important issue, and express my thanks and the public's thanks for your convening this hearing today.

Chairman NEAL. Thanks, Mel.

As I indicated, we have three panels, and we will start—our first panel we show as being headed by Mr. Robert Jacobsen, the administrator of the Savings Institution Division of the North Carolina Department of Commerce, but I understand Mr. Jacobsen is not well this morning, so his statement will be given by Mr. Steve Eubanks, deputy administrator, Savings Institution Division, and

he is accompanied by Mr. David Worth who is the staff counsel for the Savings Institution Division.

We will put your entire statements in the record, and would like to recognize you now to hear from you.

Welcome, gentlemen. Thank you very much for coming this morning.

STATEMENT OF ROBERT JACOBSEN, ADMINISTRATOR, SAVINGS INSTITUTION DIVISION, NORTH CAROLINA DEPARTMENT OF COMMERCE, PRESENTED BY STEVE EUBANKS, DEPUTY ADMINISTRATOR, SAVINGS INSTITUTION DIVISION; ACCOMPANIED BY DAVID WORTH, STAFF COUNSEL, SAVINGS INSTITUTION DIVISION

Mr. EUBANKS. Mr. Chairman, Representative Watt.

My name is Steven Eubanks, and I am the deputy administrator of the Savings Institution Division of the Department of Commerce, State of North Carolina.

Bob Jacobsen, the administrator, had planned to attend this morning, but was prevented from doing so because of medical reasons.

I also have with me David C. Worth, Jr., counsel for the division, who has been involved in the thrift industry for over 20 years.

We appreciate the opportunity to appear before you today to provide information for you to consider as you determine the necessity for legislation as proposed by H.R. 3615. Our office charters, regulates, and supervises State-chartered savings and loan associations and State-chartered savings banks.

Prior to October 1991 the only form of thrift institution regulated by our office was a State-chartered savings and loan association. This type of charter is and was granted and governed under the provisions of chapter 54B of the North Carolina General Statutes. These institutions are also regulated by the Office of Thrift Supervision, the OTS, because their depositor accounts are insured under the Federal Savings and Loan Insurance Corporation. Following the combination of FSLIC into the Federal Deposit Insurance Corporation, the FDIC, all institutions' depositors' accounts are insured under that entity.

In 1991, our North Carolina Legislature enacted chapter 54C of the North Carolina General Statutes, and it became effective in October 1991. One of the provisions of chapter 54C provides that institutions, Federal or State chartered, operating in North Carolina may convert from such charter to a charter granted under the provisions of chapter 54C.

Additionally, the statute permits the de novo formation of such institutions. To date our office has received no applications for the de novo formation of a State savings bank. However, we have received and processed to consummation 63 applications from institutions wishing to convert to the State savings bank charter. We presently have three applications pending completion, and expect those institutions to complete the conversion process prior to the end of January 1994.

Why has this transition from one form of a charter to the other occurred? Well, in our view there appear to be several reasons for this, some you have mentioned before.

Many institutions seem to wish to divorce themselves from the adverse connotation which appears in the minds of the public when one mentions a savings and loan association after the turmoil associated with such institutions in the 1980's. Thus, a name change is one consideration.

Another is the regulatory scheme cost and fee schedules. A State-chartered S&L pays supervisory fees and assessments to our office and the OTS. Additionally, it is subject to examination by three regulators; namely, our office, the OTS, and the FDIC.

A State-chartered savings bank, on the other hand, pays supervisory and examination fees only to our office. Inasmuch as the FDIC does not charge for an examination, and our annual assessment based on asset size is substantially less than the fees imposed by the OTS, the economic factor is certainly a consideration.

Additionally, we have entered into an understanding with the FDIC which currently, as we said, does not charge for an examination, to share examination reports and perform alternate yearly examinations. Therefore, a savings bank will only be charged for an examination every other year, unless there is some problem which could cause either us or the FDIC to determine that we needed to examine more frequently.

Accessibility has been mentioned as a reason for conversion. With our offices located in Raleigh, North Carolina, it is easier for management of some institutions who wish to meet with us for some reason to reach our offices, even with the great distance in North Carolina from mountains to coast, than it is to schedule a trip to Atlanta, Georgia.

Last, the SSB charter affords the institution somewhat greater latitude in its asset composition. The SSBs are required to satisfy the Internal Revenue Service-qualified thrift lender test, which means they must have 60 percent of their assets in qualifying home loans. OTS-regulated institutions at the time chapter 54C was adopted required a 70 percent ratio. They have now reduced the requirement to 65 percent.

While we are sure there are probably other reasons which may be mentioned by those who have chosen to convert from one form of charter to the other, these are some of the reasons that have been shared with us by managers of those institutions which have converted.

It has been alleged that our office is more lenient and more relaxed in enforcing the regulations, both State and Federal, and that is a basic consideration for such conversions. We would submit that this is far from the truth. We have publicly stated, and we believe that our actions will support the fact that no institution applying to convert to the State savings bank charter will be considered if it cannot demonstrate that under the rating system used by both the FDIC and the OTS such institution has earned a 1 or 2 composite rating.

In the case of the OTS, that system is called a MACRO rating system, and under the FDIC the acronym is CAMEL. Each system rates the strengths and levels of capital, assets, management, earnings, and liquidity of an institution, with 1 being the highest rating, and 5 being a very troubled institution.

Additionally, it should be noted that with the minimum OTS tangible capital-to-assets ratio set as low as 3 percent, and North Carolina savings banks at 5 percent, excluding goodwill, and a requirement for 5 percent liquidity by the OTS, with North Carolina savings banks at 10 percent, it appears that our requirements may be more stringent.

While this policy has been followed, the result has been the conversion of a group of institutions to this type of charter which are recognized as being sound institutions. It has also created a list of institutions which the midsized and larger banks have used as a shopping list of candidates that they first consider to be merger or acquisition candidates. This thought leads us to the topic of discussion of H.R. 3615 which is on the agenda today.

Until the opportunity for institutions to become a State savings bank arose, all conversions from mutual to stock form, including merger conversions and conversion acquisitions, required the approval of an application for such transaction not only by our office for State-chartered institutions, but also by the Office of Thrift Supervision. Since the institution was seeking approval by the OTS, and since the OTS had been overseeing conversions since the 1960's and had conversion regulations in place, all plans of conversions received approval and were conducted under its regulations, rules, and policy guidelines.

While our office had adopted conversion regulations as set out in Title 4, subchapter 16G, of the North Carolina Administrative Code, those regulations are almost verbatim the same regulations adopted by the OTS. Therefore, we provided very little input or oversight into this process of conversions, merger conversions or conversion acquisitions.

The only policy statement published in the Federal regulations which affects merger conversions or conversion acquisitions which has not been adopted by the division, and of which we are aware, is 12 CFR section 571.5(d). In summary, it provides that in a merger or acquisition if any officer of the acquired institution will, as a result of this transaction, receive compensation, including deferred compensation, increased in excess of the greater of $10,000 or 15 percent more than that currently received, this fact will give rise to a presumption of unreasonableness. Such presumption may be rebutted.

Now that State-chartered savings banks are not supervised by the OTS, those institutions wishing to convert to stock or engage in a merger conversion or acquisition conversion must apply to our office and receive approval of their plan of conversion in order to proceed.

As stated, our conversion regulations are almost verbatim the same as those enforced by the OTS, and the differences are in our view not substantial or material. While our office has no published policy statement creating a rebuttable presumption, we do review the levels of compensation to be received by an officer of a merging or converting institution. In fact, unlike any requirement of the OTS of which we are aware, we require the institution to present our office with a spread sheet which summarizes all of the readily ascertainable economic benefits to be received by any party to a merger conversion or acquisition conversion, including the mem-

bers, depositors, community, directors, officers, employees, and acquirer presented on a present-value basis. We adopted such a procedure after noting that in the typical transaction related under the OTS rules and guidelines that the principal beneficiary to these types of transactions is the acquirer.

We believe that our request for this type of analysis to be presented as a confidential portion of the application filed with our office has encouraged the boards of directors of acquirees to consider not only the increased services such institutions are attempting to obtain for their member/depositors, the value of which we cannot readily quantify, but also the economic benefits and to whom such benefits accrue.

A review of transactions conducted under the OTS rule would cause one to conclude that while limiting by regulation the amount which insiders could potentially receive may have worked to the benefit of the acquirer, it has also worked to the detriment of the depositor-member, as it has certainly imposed an artificial constraint on free market forces.

We have expanded the disclosure requirements and presentation of benefits not only to insiders, but to transactions in general by requiring that information be presented in tabular form. For example, we require that the institution show the current salary, including base salary and deferred compensation and perks, and the proposed salary and benefits side by side in a table. If the transaction involves stock grants or stock options, we require that presentation in tabular form, including dollar values of the grants or options, using assumptions as to increases in value which may accrue to the recipient. We are of the view that inasmuch as the transaction cannot occur without the approval of the majority of the members, and the members have the power to vote to approve or disapprove the transaction, our concern should be focused on ensuring that a full, fair, and adequate disclosure of the facts be presented to the members so that they can determine if they are in favor of it or not.

We are of the view that this democratic process works in this type of transaction as well as it works in November every 2 years. Therefore, while we believe that Congress is rightfully concerned about this important area of transactions as it may affect the financial services available to the American public, we do not believe that this is an area that requires Federal legislation or additional regulation. We believe that States have the power to regulate this type of transaction, and we certainly believe that the approach followed in North Carolina makes as much or more sense than the limitations imposed under the Federal OTS system.

Furthermore, we believe that informed member depositors can review a proxy statement, make a decision, and vote on whether they support a transaction proposed by management without the paternalistic protection of the Federal Government. We do not believe that artificial regulatory constraints should be imposed on free market forces.

To date there has been one proposed transaction in which the members convinced management that they would not support such a transaction, and one transaction in which the vote was hotly contested. We believe that these two examples indicate that the free market forces do and will work to set limits on what is acceptable.

We would be remiss not to note that in a typical conversion from mutual to stock form, as well as in the conversion merger or conversion acquisition the parties involved also have their plans reviewed and approved, and their disclosure documents reviewed by other regulatory agencies. For example, if the transaction involves the conversion of a mutual to be acquired by a State-chartered bank owned by a holding company whose stock is publicly traded, the parties file application with the FDIC for purposes of continuation of insurance of accounts, the Federal Reserve Board which regulates holding company activities, and the Securities and Exchange Commission to review offering materials and disclosure, and the State commissioner of banks who oversees the bank in which the SSB will be merged to ensure safety and soundness following the consummation of the transaction. If the acquiror is a nationally chartered bank, substitute the Office of the Comptroller of the Currency for the State commissioner of banks. The point being that all those regulators of various activities have reviewed this type of transaction, and none have seen the necessity to adopt and impose more regulations to correct any noted deficiencies, nor have any of those agencies contacted us to advise us that they were having a problem with the way things were being handled by our division.

Additionally, we believe that the information in the package furnished members of the subcommittee regarding the transactions and the participation of the member/depositors in such transactions as investors supports our view that management's approach in structuring transactions which provide for a deposit premium to all depositors have added a dimension to this type of transaction which benefits all member/depositors, not just a few who are also professional investors and speculators. This is a provision which has not been and will not be permitted under the OTS approach. Limiting the terms of transactions only to those viewed as acceptable by a group of regulators eliminates creativity and stifles experimentation. As has been the case previously, the results of such creativity may be adopted by others in future transactions.

We are aware of the arguments that the only reason boards of directors adopt a plan of conversion merger is to reward themselves, and what they should be doing is adopting plans of conversions with the intent to operate as a stock institution for some time, cause the stock price to increase and then sell out at a profit. However, as we know, stock prices can go down as well as they can go up. We would note that a number of mutual institutions which converted to stock were subsequently taken over by the RTC with no money paid to the stockholders. In other words, those member/depositors who bought initial issue stock in those stock conversions and did not or could not sell such stock soon thereafter because of the thin market which exists in many of the smaller offerings, lost their entire investment less whatever, if any, dividends were returned to the purchasers prior to the institution failing. In any event, we believe that the boards of directors of the various institutions are best able to weigh the risks and rewards of the various options open to them, and to the institutions they are elected to operate, and to determine the course of the institutions they have been elected to control, and as long as the decisions they make are

based on prudent business judgment and such decision does not adversely affect the safety and soundness of the institution, it is not our office's purpose, nor the purpose of the Federal Government to impose its business judgment on the operation of these institutions.

In conclusion, we would remind the members of the subcommittee that while it has been presented with, or will receive, a great deal of information about many types of the transitions which have been occurring within the financial institutions community and who benefits and who loses, of all the transactions we have discussed, whether it be a charter conversion from Federal or State savings and loan to a State savings bank, a conversion from mutual to stock, a merger conversion, a conversion acquisition, a stock merger, or a case sell-out, the depositors are assured of receiving the full insured value of their deposit accounts and, except a takeover by the RTC, none can occur without the majority vote of the members or stockholders.

Thank you for the opportunity to appear before you today, and we will be happy to respond to questions from members of the subcommittee.

[The prepared statement of Mr. Jacobsen can be found in the appendix.]

Chairman NEAL. Thank you, sir, thank you very much.

You say on the last page that it is your opinion that it should not be your purpose, nor the purpose of the Federal Government, to impose its judgment on the operation of these institutions. Would you recommend that the OTS then change its regulations to more clearly mirror yours?

Mr. EUBANKS. I believe that is the case, sir. Our regulations are almost verbatim the OTS's, except for the fact that they do have the limitation of—I believe it is 15 percent or $10,000 on the insiders.

Chairman NEAL. Why of all the changes of all the regulations that you have testified, the only one you chose not to adopt was that one. Is that right that you adopted all except that one which gives the——

Mr. WORTH. If I might respond to that, that is a policy statement, sir. That is not a regulation, that is a policy statement that the OTS has adopted and published. They may have some other policy guidelines which are not part of their published, quote regulatory scheme, of which I am not familiar, but that is a policy that they did adopt.

We do look at these transitions on an ad hoc basis in the same manner that they do. They happen to have solely that one policy statement of which I am familiar.

Chairman NEAL. Well, the testimony——

Mr. WORTH. We have not adopted such a policy statement, nor published such a policy statement. We do look at them on an ad hoc basis.

Chairman NEAL. Well, I believe the testimony was that it is the only policy statement that you did not adopt. Is that not what you said?

Mr. WORTH. Well, it is the only policy statement of which we are aware in the merger conversion area. They have a set of regulations which we did adopt. The policy statement is separate from

the regulations, it is in a different section of the manual, and that was not included as part of our regulations, simply because policy statements are different from regulatory efforts.

Chairman NEAL. That is the reason you did not adopt it?

Mr. WORTH. Yes, sir.

Chairman NEAL. I mean you would have adopted it if it had been a regulation?

Mr. WORTH. I cannot speak to that, I was not there, sir.

Chairman NEAL. Anyway, the testimony was that this is the only policy statement you chose not to adopt.

Mr. WORTH. That affects this area that we——

Chairman NEAL. And this is the policy that allows very different treatment of the officers and directors and the depositors.

Mr. WORTH. I think that is a fair statement.

Chairman NEAL. So you are actively encouraging that different treatment as I take it?

Mr. WORTH. I think there are occasions where there may be a proper different treatment, yes, sir.

Chairman NEAL. And you think the OTS, of course, is wrong, then, in requiring that everyone be treated in an even-handed way?

Mr. EUBANKS. They are not requiring that, sir. It may be rebutted. If you can justify the excess to them, there is a strong possibility they will approve it. It is a rebuttable presumption.

Chairman NEAL. What is the record of that?

Mr. EUBANKS. I do not know. I do not know what their record is.

Chairman NEAL. Well, does it not appear that the directors have an inherent conflict of interest in this area between their duties to depositor/members and the acquirers who are offering them large compensation packages in some cases? Does that not appear, at least on the surface, that there might be some little conflict of interest there?

Mr. WORTH. I think there is always the possibility for the appearance of a conflict of interest there, and I would respectfully point out to the chairman that the November letter that you cited, sir, was issued to those boards of directors in part to remind them of their fiduciary duty.

Chairman NEAL. They do have a fiduciary duty to the depositors?

Mr. WORTH. I think they have a fiduciary duty to the depositors, to the employees, to the institution, to a number of groups.

Chairman NEAL. Is it the same, the same level of fiduciary responsibility to themselves say as to the depositors, or who has the priority here?

Mr. WORTH. Well, you know, I do not know that anybody has a priority necessarily. I think there is a fiduciary duty that is owed to different and diverse groups. I think that is part of the territory that goes with becoming a board member, just like you have a fiduciary duty to your constituents, and your fiduciary duty to one group of constituents may be a little different from what it is to another. Certainly, they have different interests.

You know, clearly the board has to look at these things. The board supposedly is going to become informed and make a rational business judgment based on consultation with outside counsel or

accountants and other people that they will obtain information from in making a business judgment.

Chairman NEAL. Well, let me ask this question. Your division has an obligation under North Carolina law that requires you to see that—and I am quoting now ". . . the conversion will be fair and equitable to the members, and that no person will receive"—and I quote again "any inequitable gain by reason of the conversion," so specifically, how do you fulfill that obligation?

Mr. WORTH. We pointed out, or Mr. Eubanks pointed out, that one of the things we do, have started requiring is a copy of the minutes of the board meeting at which they considered this thing, and we ask the board or the people preparing the application to give us a presentation of the benefits that are going to accrue to the various constituents—members, depositors, board members, officers, employees, charities—any group that they might conclude are going to get some economic benefit from this, we require them to present that on a present-value type analysis, because some of these benefits are coming in over an extended period of time in the future, some of these benefits are coming in immediately as a result of the transaction, and to do some analysis of that and aggregate that.

To my way of thinking the way that the OTS has approached it, they have looked at every little piece of the puzzle and said "You cannot do more on this piece, or that piece, or another piece," and have set limits in that manner, and have not looked at any kind of aggregation of benefits.

Chairman NEAL. Do you make this public?

Mr. WORTH. No, sir.

Chairman NEAL. No?

Mr. WORTH. We get that as a confidential part of the application.

Chairman NEAL. Well, how does that assure that anyone benefits from this information if you keep it confidential?

Mr. WORTH. Well, we use that information in going over their disclosure to ensure that their disclosure is presented completely and fairly.

Chairman NEAL. And after you go over this now, if you see that for instance the directors and officers are going to get big bonuses and salary packages, and stock at special prices, and all this, you then have said that that is all right?

Mr. WORTH. We have also talked to some of the people that have come in with these proposals and said, "We do not think this is going to work, you better go back to the drawing board and think about this a little bit more," and they have changed their proposals.

Chairman NEAL. Why is that information about the special deals not made public?

Mr. WORTH. The principal reason I guess would be because there are so many assumptions built into any kind of present-value analysis, and the public——

Chairman NEAL. The public just is not up to knowing about that sort of thing?

Mr. WORTH. No, sir, we are not saying the public is not up to knowing about it, but I think that if you and I got into a discussion of present-value analysis of a stream of payments over a period of

time and started to present that type of information in a proxy statement, the SEC does not require that type of information, and I think it could be mischievous and confusing.

Chairman NEAL. Has the division ever determined that compensation is excessive?

Mr. WORTH. Have we ever determined that it is excessive?

Chairman NEAL. Yes.

Mr. WORTH. As I said, we have told some people we thought their plans looked a little heavy, and they needed to go back to the drawing board.

Chairman NEAL. Have you ever turned down a plan because the compensation was excessive?

Mr. WORTH. We try to have a discussion that reaches a plan that is acceptable, rather than just flat turning it down.

Mr. EUBANKS. The voters in this case are the depositors, it is their duty to turn it down if they do not like the deal.

Chairman NEAL. Well, now, on that question, as I understand it the people that plan these deals maybe work on them for a year or so and work out all the details, and then when it comes time to notify the people they are sent a complicated statement of some sort that most people do not I think understand, do not know how to read and understand; and they are given a very limited time to decide, a few days actually. Does that seem like a completely open and fair process to you?

Mr. WORTH. Well, I would submit to you, sir, that the proxy statement as you mentioned and their offering prospectus, I will agree with you they are fairly voluminous documents. We have tried to ensure that there is a summary section at the beginning that only entails several pages, and refers the reader to another location in the document where those details are spelled out, or that information that is summarized is spelled out in greater detail if they care to focus on that, but we certainly try to highlight all of the information that is pertinent that one would want to focus on and we believe is necessary to help the reader make a decision, and make an informed decision.

Excuse me, you had another portion of that question that I was trying to respond to, and it escapes me, if you would help me there.

Chairman NEAL. Well, you know, the point I was making is that——

Mr. WORTH. The number of days, you mentioned the number——

Chairman NEAL. For months, you have got teams of lawyers, investment bankers, accountants, and other professionals going over this deciding what makes sense, they put together this complicated document, I mean most people of average reasonable intelligence—I look at these things and I find them very complicated, hundreds of pages sometimes, or many, many pages, and then the person is given 10 days to respond to this.

My question was, to repeat it, does that sound like a fair deal for everyone concerned?

Mr. WORTH. Well, I would like to correct your misconception there. They are not given 10 days, they are given 10 days—I think the 10 days you are referring to is the notice that an application has been filed, and if an individual wishes to comment on that ap-

plication they have 10 business days, which is really 2 weeks, within which to notify our office and make a comment about it.

The proxy statement goes out, and I am not aware of anybody that has had a meeting in less than 20 days, and typically they are 30 to 35 days, and so this information is in the hands of the member/depositor for I would submit a period of 20 days or more that he has the opportunity to read, call, and ask questions, he can call us and ask questions, and hopefully, make an informed decision.

Additionally, I think the press has gotten involved in this and has certainly communicated, and other depositors have communicated with other depositors directly as opposed to the information they are getting from management. I believe there is certainly an opportunity for people to investigate any questions they have, resolve those, and be able to make an informed decision and vote.

I do not find it to be too much more complicated than my tax return that I have to deal with every April. [Applause.]

Chairman NEAL. Well, listen, I agree with you. I am not too wild about the tax return either.

Let me—I seem to be dominating. Let me yield to Mr. Watt, and then I will come back. I have another couple of questions here.

Mr. WATT. Thank you, Mr. Chairman.

Let me see if I can go back to kind of a more baseline set of questions and make sure I understand how this process works.

First of all, would I be accurate to say that before a conversion to a State savings bank you have a mutual savings and loan that is owned by the depositors?

Mr. WORTH. That raises an interesting question, Mr. Watt. The statute clearly says that the members of the institution are the owners.

Mr. WATT. The owners are the depositors.

Mr. WORTH. And the depositors and borrowers are defined to be the members of the institution. There are any number of court cases, some of which have arisen out of North Carolina and have gone through the Fourth Circuit Federal Court, cases that have defined the attributes of a member in a mutual institution, and the attributes of that ownership interest, and I would submit to you that those court cases basically conclude that an owner/member of a mutual institution has the right to vote, they have the right to attend meetings and elect boards of directors, and that is about the extent of their ownership interest.

The depositor becomes a member by creating a creditor-debtor relationship with the institution. He bargains for a deposit of his money and a return of interest on that money. He does not take an equity ownership interest such as a stockholder would do; he does not put his money at risk unless he has a deposit greater than the insurance of accounts, so we have somewhat of an anomaly here as to what type of ownership interest that individual may in fact have.

Mr. WATT. Well, regardless of that, I take it you would concede that the depositors are the owners, or have some kind of ownership interest in a savings and loan?

Mr. WORTH. I think the depositor has an interest, or—excuse me—the member has an interest in the S&L, or State savings bank.

Mr. WATT. All right. Now let me take it to the next level, then. Once the conversion from an S&L to a State savings bank takes place, in what way is the depositor's relationship or interest in that institution changed?

Mr. WORTH. It is not.

Mr. WATT. So in effect, then, the depositor continues to be the owner—if you assume that the depositor was the owner of the savings and loan he is also the owner of the savings bank; is that right?

Mr. WORTH. Whatever interest a member in a State savings and loan has that is mutual, that converts to a mutual State savings back, he has got the same interest.

Mr. WATT. All right. Well, without getting into a long, drawn out discussion about it, if the depositor is not the owner, who is the owner? Is there some other entity that you are aware of that owns it?

Mr. WORTH. I think the member is the technical legal defined owner.

Mr. WATT. OK. I just wanted to make sure I was clear on where we are starting from here, that we start out with somebody in this process having an ownership interest, and those depositors have an ownership interest.

Now let me ask one other question. Once that conversion is made to a State savings bank, does that bank have any responsibilities to the public as defined under the law? I mean, does that bank have to comply with the Community Reinvestment Act requirements?

Mr. WORTH. Absolutely.

Mr. WATT. So there is some public interest at work here in addition to the ownership interest that is at work? Would I be safe in assuming that?

Mr. WORTH. Yes, sir.

Mr. WATT. OK.

Now, you have testified, or Mr. Eubanks has testified that a wide range of information is required to be submitted before a conversion takes place, or before a sale takes place, or a merger of that State bank into another institution takes place.

In that process, is there any kind of hearing or adversarial proceeding which takes place where your office is just not receiving information, but is actually making some kind of determination in an adversarial proceeding?

Mr. WORTH. There can be. To date there has not been. As I view the——

Mr. WATT. What triggers that?

Mr. WORTH. As I view the statutes, and as I interpret the statutes if the institution were to apply to convert from mutual to stock, or convert and be acquired or whatever, and our division were to take some adverse position with respect to that application, then the institution could institute a proceeding to have our decision reviewed.

Mr. WATT. But is there in that process the opportunity for either the depositor who is the owner at some level, or the public which has an interest as you have acknowledged, to trigger that adversar-

ial proceeding or some proceeding to make a determination in this process?

Mr. WORTH. I do not believe the statutes afford the depositor that right, nor do I believe it affords the public that right.

Mr. WATT. So when the depositor gets——

Mr. WORTH. But that is because of a peculiarity of the manner in which the statutes are drafted. The statutes are drafted in such a manner, for example, that if an institution were to apply for a branch application the statutes do clearly afford a competing institution the opportunity to make comment with respect to that application, and the approval or disapproval of it, and call for a hearing on a decision that the administrator might make.

I do not believe that the statutes afford that same right to a member/depositor or member of the public, and that is because of the manner in which the legislature drafted the statutes.

I can see us getting off here into an issue that comes up in connection with the Graham matter where a group of depositors had asked for a hearing and the administrator has denied that, and that matter is under review by the courts, and I think I have said about all I can say in that area.

Mr. WATT. Well, I did not mean to get—in fact, I was not even aware of that. I think what I am trying to do is get a clear understanding of where in this process other than the ultimate right to vote Yes or No on an acquisition a depositor who is the owner of the institution has an opportunity to have somebody determine whether he has been dealt with fairly, and I do not want to stray over into that other issue——

Mr. WORTH. I appreciate that.

Mr. WATT. If there is not an adversarial process, where is it in the process that a depositor who is dissatisfied, or a member of the public who feels that this acquisition is not in the public interest, where is it that either one of those people has the opportunity to bring that transaction into question?

Mr. WORTH. Well, they have at least two opportunities I would submit to you. One is when the application is filed by the institution there is an advertisement run in the newspaper, there are notices posted in the offices of the institution that such an application has been filed and it is open for comment.

Those individuals desiring to do so may obtain a copy of the application, except for those portions that are confidential, from our office or from the institution, and they may write and make comments concerning that application and the proposed plan of conversion or whatever it may be, with our office.

They certainly have the opportunity to talk to the board members whom they have elected to represent them in this matter, and they have the opportunity to provide input in that manner.

Once the proxy statement goes out, or before the proxy statement goes out they have the opportunity to solicit votes from other members of the institution. So I think clearly these people have an opportunity to make an input into the thing. I do not know that it needs to be an adversarial proceeding, or that it rises to an adversarial proceeding.

Mr. WATT. All right. Who is it in the process who then has responsibility for protecting the interest of the owner or the depositor?

Mr. WORTH. Well, I would submit to you that the board has that responsibility.

Mr. WATT. And if I am a depositor and the real issue does not have to do with whether I think that the amount of money on the table is sufficient, I think it is good to have the acquisition, the amount of money that the acquirer is paying is sufficient, but I think the management is getting too much of the money, and the depositors are getting too little of the money, how do I then get the management, which seems to be as Chairman Neal has indicated, to eliminate its conflict of interest in making that evaluation in this process? Is it your office that has responsibility for making sure that the management is not overbearing?

Mr. WORTH. We certainly consider that in our review of the application.

Mr. WATT. And I take it, then, that is when you said, or earlier testified that you have told some people I think, if I am quoting you correctly, that you do not think it is going to work.

Mr. WORTH. That they might not get their application approved if they continue to press with that type of proposal.

Mr. WATT. OK. And in making that statement to folks, against what standards have you evaluated that? Have you evaluated it based on the public interest? Is it your responsibility to evaluate it based on what is in the best interest of the depositor, or the owner? What standards are you applying in that process?

Mr. WORTH. I think we have to look at all those issues that you say. I think there is a weighing and a balancing of a number of issues and a number of interests, and I think that as long as we conclude that it is not unfair then it becomes an issue that goes to the members.

Mr. WATT. OK. Well, I——

Mr. WORTH. I would also think it is interesting, and I am not trying to be critical of your exercise to put this H.R. 3615 before and adopt the quote-unquote OTS procedures, but it seems that the whole issue is arising here because the depositors are getting something, whereas in the OTS deals the depositors were getting nothing, and now——

Mr. WATT. I think that is true, and——

Mr. WORTH. And now the issue is raised, and everybody says "Wait a minute, the depositors are not getting enough."

Mr. WATT. I think that is true, you are absolutely right, and I think that, though, points up the predicament that you put a depositor in when you send him a statement which says "Vote for this or against it" because the depositor in most cases is getting something. The question is in the division of what he is getting, is he getting what he should be as opposed to what management is getting, and the concern I have is that this process really does not lend itself to make that determination, so the depositor is left with the situation where he would be voting against his own interest in some respect if he voted no, yet he does not have any mechanism to improve the deal, and that is a troubling issue.

I do not mean to—you know, this is not adversarial between me and you, we are wrestling with how you really protect the public's interest, and protect the depositors' interest, and protect the owners' interest, the management's interest too, and I do not even—I am not a sponsor of this bill, so I did not come here with any particular bent on it, I am just trying to make sure that I understand who it is that is supposed to be protecting whose interest, and I would say that I am somewhat troubled by at least one part of your testimony on the fourth page where you say that "We believe that informed member/depositors can review a proxy statement, make a decision and vote on whether they support a transaction proposed by management without paternalistic protection by the Federal Government."

The presumption there is there should not be paternalistic protection by the Federal Government, I presume also by the State government, and unless somebody is exercising that role in the process, the role of protecting the depositor who is the owner of this institution, and the public which has a right here as you have acknowledged, if that is your agency's attitude that to inject yourself into this, or for the government, Federal or State, to inject itself into it, then I am not sure that I understand who then exercises those important rights, and I hope we can have a better understanding of it.

Mr. WORTH. Well, I understand your point, and maybe I can clarify the position that we are trying to take there and not cause you concern.

I think the depositor is owed the assurance that he is going to have his deposit, his principal back and his interest back, and that is going to be protected.

Now you get to his ownership interest that you want to protect, and if you want to protect that, then I would submit to you that the SEC has a pretty good scheme for protecting stockholder interest, and that is full disclosure, and that is the process that is followed in every stock transaction I am aware of. You do not have somebody up in Washington saying "Wait a minute, you know, you cannot put this kind of transaction together except as it may affect antitrust." Basically, the disclosure issue is you disclose to the stockholders and they vote, and——

Mr. WATT. There is in that process some mechanism for an unhappy stockholder to inject himself into the process?

Mr. WORTH. He can do it, he can get his views before the other stockholders, and that opportunity is afforded to members, and I think the problem is we are trying to mix deposit interest and stockholder interest, and I submit to you that——

Mr. WATT. I am not sure I can let you get away by assuming that this is perfectly analogous. Banks and insurance companies really do have a higher standard to the public, I would submit, than a regular old corporation out there, and I think that has been recognized in the CRA context, it has been recognized in a number of different contexts, because banks and insurance carriers have a particular responsibility that goes beyond just the regular process, and I——

Mr. WORTH. That is the subject for a different day, too, but I agree with you, sir, and I am not disputing that issue, but I think

you need to focus that here we are not talking about the actual business of the bank in making deposits or making loans, or doing this or doing that, we are talking about a fundamental corporate change as to how they are going to continue to do business in the future, and it does not affect the operations as to how they are doing business to the customer. What you are talking about is a corporate change, and that is getting into the stockholder issue, and that is a whole different game.

Chairman NEAL. Would the gentleman yield——

Mr. WATT. Thank you, Mr. Chairman. I am going to yield back to you completely, and I appreciate your indulgence in giving me the amount of time.

I hope that this panel kind of at least focuses the issues that are out there involved with this. I am not sure that—hopefully we will start developing some various alternatives for dealing with those issues.

I yield back the balance of my time, as we say. I know I have used more than my time.

Chairman NEAL. No problem. Thank you.

You know, part of this comes with some history for us. Personally, I must tell you, I do not like the heavy hand of government involved anywhere that it is not essential. I see too many examples of waste as a result of that and so on, and do not like it, but I must say also that that very philoscphy that you express related to savings and loans has cost American taxpayers hundreds of billions of dollars.

During the early 1980's essentially that was the attitude, they said, "The Federal Government is going to take the heavy hand of regulation off the savings and loans, and we are not going to watch what they do," and when some of these guys figured that out, you know the long, sordid, and sorry story of that.

Let me get back to this one thing, and I am not going to prolong this panel any longer, but here is what brought this to our attention. The Office of Thrift Supervision has a rule that says that officers and directors cannot increase their compensation in one of these deals by more than 15 percent. Now, you chose not to adopt that rule for your regulatory purposes.

Now let me give you a couple of examples of some situations that came about and brought this to our attention, and maybe there is nothing wrong with them, I do not know, but I must say that they raise questions with me.

Here is one example: A fellow here was the president and chairman of the board of a savings and loan. Before the conversion he made a total of salary, director's fees, bonuses, and commissions of $147,228. After the conversion he made $182,000 in salary, $780,000 worth of stock, plus an amount equal to Federal and State taxes on that up to $420,000, $90,000 a year for 10 years upon retirement, an additional $6,000 a year for 10 years from director's fees, retirement plan, and so on. So this guy went from $147,000 to—I cannot even add all this up—well over a million bucks as a result of this deal.

Now, under the OTS rules he could not have done that.

Mr. WORTH. What was the base pay——

Chairman NEAL. Let me just give you another example if I can here.

Here is someone, this is a vice president—well, this is another example in the same institution—who went from, just in summary, $100,000 roughly to it looks like $700,000 or $800,000. That is in the same institution.

Now, there is another institution. This person went from $98,000 before conversion, after conversion $172,000 plus $520,000 in stock and stock options, $520,000 in more stock, and $290,000 for tax payments and so on, so he went from $98,000 up to it looks like well over $1 million.

That would not have been allowed under the OTS rules.

Mr. WORTH. I believe that——

Chairman NEAL. Maybe it is fine. Honestly, I mean that, there may be something about this that I am just missing, but just on the surface of it it seems like that there is something very unusual going on. Is there or not? Am I wrong about this?

Mr. EUBANKS. How did the vote turn out, sir? What was the vote of the institution?

Chairman NEAL. Oh, you mean that democratic process like Congress? [Laughter.]

Mr. EUBANKS. Yes, the democratic process.

Chairman NEAL. Was there a real informed vote on that? Did the depositors, were they told that this guy was going to get from $98,000 to over a million bucks——

Mr. EUBANKS. Should Congress choose to double their salaries, would you bring it back to me to vote on?

Chairman NEAL. And that they voted on that?

Mr. EUBANKS. If Congress should choose to raise your salary by a 100 percent, would you bring it to me to vote on?

Chairman NEAL. We had to vote on it.

Mr. EUBANKS. You voted on it. Did you bring it to me to vote on?

Chairman NEAL. Listen, it would be all right with me, I mean if that is the question. Is it all right with you to let these people have——

Mr. EUBANKS. The same process is in motion here, the exact same process.

If the members of a mutual institution do not like the deal, they go, they cast their votes against it, the deal with die dead as of 4 o'clock.

Chairman NEAL. Are they fully informed about it?

Mr. EUBANKS. Do they know how to vote? I would hope that they are.

Chairman NEAL. You hope they are.

Mr. EUBANKS. They vote every 2 years for the highest offices in the country; they can vote on the future of their institutions.

I have more faith in the American people than that.

Chairman NEAL. That is an interesting question. Do not usually the managers of the savings and loans get proxies from the depositors so that they actually get a chance to vote?

Mr. WORTH. These are general proxies.

Chairman NEAL. Huh?

Mr. WORTH. Is that what you are speaking to, the general proxies when you make a deposit?

Chairman NEAL. Well——

Mr. WORTH. A special proxy is sent out, if you do not choose to vote it No that we will vote it Yes because of the general proxy; is that what you are referring to?

Chairman NEAL. That was not actually, but that is another interesting point. How does that work usually? Do most people send back their votes, or do they let the directors vote their proxies?

Mr. WORTH. If they do not send back their votes and they have a general proxy, then they are going to vote the thing in favor of it, unless they specify that they do not, or they do not view it as an extension.

Chairman NEAL. How does that work usually? What percent are actual votes, and what percent are proxy votes?

Mr. WORTH. Some of the institutions that are engaged in these transactions elect not to use the general proxy even though they hold such, and so all of the vote is done by the vote and on that particular matter before them in a special proxy if you want to call it that.

Some of the institutions elect to use the standing general proxy, and their disclosure documents clearly state on the face of it that "We will use your general proxy, and we will vote for this unless you return one saying you do not want it."

Chairman NEAL. I understand that. My question, though, was, I was just interested in how it is done.

Mr. WORTH. I do not know that we have broken down every one of those that have been done by general versus by special proxy, but I think if you look at the charts that we submitted to you, some of the votes are pretty astounding on the associations—and I will just hold it up so you can see it, I think it is pretty clear—the high line is the people that voted for it, the one that you almost cannot see is the people that voted against it, the one in the middle is the abstentions.

Chairman NEAL. Which one was that?

Mr. WORTH. Well, it is across-the-board for them. Pick any one of them.

Mr. WATT. Mr. Chairman, if I can ask you to yield for a second——

Chairman NEAL. Sure.

Mr. WATT. It seems to me that—I am going to try to take us back to the process issue rather than the specifics of particular mergers. The question I have still, as a process issue, not as a fairness issue, but as a process issue, is in this process, should not somebody who does not have a conflict of interest be representing the interest of the owners?

Now, you tell me that that is addressed because the owners—the depositors in this case—get to vote ultimately, and I would expect that in each one of these transactions that Chairman Neal has alluded to obviously the depositors got to vote as an ultimate proposition, and I would submit that probably in each one of those cases the owners, the depositors got something in addition to what the management was getting.

The more cogent question, it seems to me, is the process such that the owners really have the opportunity to get all they should

have gotten, or could have gotten in this process had they not been represented by somebody who did not have a conflict of interest.

I would almost be happy, you know, processwise, the result could be the same, but if part of this $1 million or more that went to the president, the owners had the opportunity to get in there and move it to themselves as opposed to it going to the president, then I could understand that, but I do not know how simply having the right to vote addresses that, and your response of saying "Well, that is the same process you operate under in Congress" is not satisfactory to me. I mean, I do not think that is satisfactory to anybody.

Mr. WORTH. It certainly is not to a lot of people, sir. [Applause.]

Mr. WATT. Well, I am not sure that that is what this hearing is about, and if anybody here is here about that process, I mean the question is, is there some way that the owners of this institution other than simply rejecting the deal, which might be marginally beneficial to them, but not nearly as beneficial to them as it could be, if they were at the bargaining table and they were bargaining not only with the acquirer, but were also bargaining with the folks who are divvying up the proceeds of the acquisition.

Mr. WORTH. They do have the power to get the directors in there on the board that would be sympathetic to their views.

Chairman NEAL. I equate sympathy and paternalism is what I say.

You are saying that the only way the owner is going to have some role in this is for the management to be sympathetic to him?

Mr. EUBANKS. No. People have—they have the right to vote individuals onto the board who are of a like view as they are, and in that way—if you are talking about transferring the money—that is the way in which they can do that, and what is going to eventually come is that you are going to have depositors who are going to turn down a deal because it is not acceptable to them, and you are going to see if these things are still attractive—you are looking at a piece in time here where banks are extremely attractive to other banks to acquire—that has not always been the case—and you have really seen that if they are still attractive given the fact that more things are going to have to be distributed in different ways because the owners of these institutions will not approve these deals, then you have the process working to its end result.

Mr. WATT. But the only way you can get to that end result is to have the owners really vote against their own interest, because these things are marginally beneficial to them, they are just not as beneficial to them as they might ought to be, so they are going to vote against their interest so that they can get a second deal and a third deal and a fourth deal and a fifth deal and you are going to communicate that to large numbers of stockholders.

Mr. WORTH. I am saying if the depositors, the owners of the institution, do not feel that this deal is fair to them, equitable to them, they do not like the color of the new sign that is going to be on the building once it is completed, they vote No.

Mr. WATT. That is the only recourse they have?

Mr. WORTH. I think you are—and I am not trying to argue with you, but clearly they have the opportunity to talk to the board members that they have elected, just as your constituents have the

opportunity to talk to you and try to sway you on your view of whatever it may be that you are considering proposing as legislation, and I do not think these boards of directors have just gone off in a corner somewhere and said "Hey, let us see if we cannot pull this thing off." I think they are open and accessible to the members of the institution.

I do think they have, the board has a different level of knowledge than the average member may have. They have been through it, they have seen the situation and what can occur, and they may be viewing some other issues that the member has not focused on if all he has focused on is "How much is in it for me," not whether the employees get to continue having a job, not whether we are going to get some more services for the bank, not whether this or that issue may be at the table, and again I think the board has a number of issues and a number of constituencies that they have to look out for, and that is why they have been elected and serving as board members is in order to perform that function, just as you are elected to perform a function in Washington, and you have to weigh the interest of your constituents and your principles and the things that you are considering, and, you know, to conclude that just because the board got some bucks out of it that they are lining their pocket I do not know is a valid assumption.

Mr. WATT. I am not concluding that, Mr. Worth, but that is certainly the way the press and some of the depositors are looking at it.

I am talking process here more than I am result, and having been involved in one of these you are absolutely right, the board members and the management have a number of interests to look out for—they have got the employees, they have got the depositors or the owners, presumably they have the public's, but I would tell you that the one that seems to come out paramount, seems to come out paramount when you look at figures like the one that the chairman has talked about is their own self-interest.

Mr. WORTH. I understand that and I appreciate it. I would point out to the chairman that the numbers he was quoting there, I think if you look at the OTS arrangement it is 15 percent or $10,000 that creates a rebuttable presumption, and that is an annual whatever it may be.

What you were looking at was not only retirement plans and various other things, but also annual compensation. Some of that is plans that are put in place, or already existing or there; some of those plans are to put the institution that is merging on some kind of compatible footing with the employees of the institution into which it is being merged.

I can think of nothing more mischievous than acquiring an institution and plugging an individual employee in and having him skew the salary scale for the institution that is making the acquisition, either by paying him too much or by paying him too little above what comparable people in that institution would be earning, and so I do not—you know, I think there are a number of factors you need to look at when you start saying "Well, how much is this guy getting out of a deal."

Mr. WATT. I agree.

Thank you, Mr. Chairman. I do not have any further questions.

Chairman NEAL. Well, thank you all. I think you have done a very fine job of discussing your views of this, and I think it has been very useful, and we have a couple of other panels that may give us a little different point of view.

Thank you all very much for being with us this morning.

Mr. EUBANKS. Thank you for inviting us.

Chairman NEAL. Thank you, sir.

Our next panel is comprised of four people, Mr. Jack Palmer, a member of a group that was opposed to the merger conversion of Shelby Savings Bank in Shelby, North Carolina, with the Central Carolina Bank, and he is accompanied by Mr. Larry Wilson, esquire. Our second panelist is Mr. Cary Allred, member of an opposition to the merger conversion of Graham Savings Bank in Graham, North Carolina, with the Central Carolina Bank, and he is accompanied by Mr. David Clark, esquire. Mr. John Kennedy with a group as I understand it called Citizens for Fairness, Forest City, North Carolina, a depositor group opposing the merger conversion of First Savings Bank, Forest City, North Carolina, with Centura Banks, Inc., and he is accompanied by Mr. Mike Calhoun, esquire, and Ms. Evelyn Surratt, member of opposition to merger conversion of Home Savings Bank of Albemarle, North Carolina, with Branch Banking & Trust Co., and she is accompanied by Mr. George Eddins, Jr., a medical doctor.

I want to welcome all of you to the hearing this morning. We will put your entire statements in the record, and we would ask that you limit your oral comments to about 5 minutes as we discussed in advance of the hearing—maybe 5 or 6 minutes, something like that. That will give us a chance to engage in some questions and answers.

Unless there is some objection, we will just hear from you folks in the order in which I originally read your names, and that would mean that we would hear from Mr. Jack Palmer first.

Mr. Palmer, we look forward to hearing from you. Thank you for being with us this morning.

STATEMENT OF JACK PALMER, MEMBER OF OPPOSITION TO MERGER CONVERSION OF SHELBY SAVINGS BANK, SHELBY, NC, WITH CENTRAL CAROLINA BANK

Mr. PALMER. Thank you, Mr. Chairman, and Congressman Watts.

As you stated, I am Jack Palmer from Shelby, North Carolina. I have been a director of the Shelby Savings and Loan for a period of 29 years from 1960 until 1989, and we also have a period of 29 years I served with Edwin Ford who is here with us now who was a director for 48 years, and chairman for a good number of those years. He and I along with another director retired from the position of directors due to a then-existing law containing a mandatory retirement age of 70.

I have been a depositor at this institution for over 44 years, I also financed my first home on a 4 percent GI loan after the war.

In April 1992 I received a notification from the savings institution, then known as the Shelby Federal Savings Bank, about a special meeting of its members which was to be held on May 28, 1992.

The purpose of the meeting was the adoption of a State savings bank charter.

I was curious about the need to change from a Federal savings bank to a State savings bank, so I contacted the CEO and was told that a change would eliminate an annual audit, resulting in the saving of several thousand dollars a year, and would allow the bank to operate under less strenuous regulations under the State charter.

This appeared to make sense to me. However, I noticed that the attached proxy card for this meeting could be used on any and all matters from time to time, from year to year until the proxy is canceled in writing delivered to said institution. These were general proxies. I was told while we were fighting this merger by the public relations people representing this savings institution that I had lived by these proxies all this time, and now I was objecting to it. Well, I would have to admit ignorance. I did not know that we had general proxies, I never signed one all the time I was a member. They would get proxies before annual meetings and use them, and these general proxies apparently had accumulated, and even as directors we were not aware that they were general proxies, and I was not alone in that.

This made me aware of the fact that the directors would almost always, by virtue of having these general proxies, would have the votes to control any election that had to be decided by the membership.

At the special meeting which was held the 28th the State savings bank charter, of course, was approved, and they changed the name from Shelby Federal Savings to Shelby Savings Bank, and now the bank would be operated under the North Carolina ECD Savings Institution Division rather than the U.S. Office of Thrift Supervision.

General proxies—I know this is not in your bill, but somewhere regulations should outlaw general proxies. I know of no business corporation that has general proxies other than savings and loans, and I think only mutual savings and loans at that.

On December 7, 1992 CCB Financial Corp., a North Carolina State holding bank, entered into a nonbinding letter of intent with the Shelby Savings Bank to acquire the savings bank. I heard about this letter of intent approximately 2 weeks later. Being very interested in the operation of the Shelby Savings Bank, I contacted the CEO and inquired as to how the conversion acquisition was going to be handled, and I did this several different times leading up to the meeting of acquisition.

In particular, I wanted to know what the members, management, employees, and directors would receive. I was told that under the SEC rules the management and directors were under a gag rule and could not discuss this matter with us.

Now, this ad they spoke about a while ago that was run in the paper and you had 10 days to object, which gave an outline of the proposed merger conversion, does not contain as one of the gentlemen a while ago stated confidential information, and that confidential information is that that goes into detail as to the perks that the management and the directors receive, and what the stockholders would receive, the depositors.

I have a copy of the little ad which I happened to cut out, and you know most legal ads are run very small—being attorneys you understand that.

Now, on about August 23 I, along with the rest of the membership of the Shelby Savings Bank, received a notice of a special meeting to be held September 16, a new proxy card, a stock order form for subscribing for CCB Financial stock, a 42-page prospectus, a 99-page proxy statement detailing the proposed conversion acquisition of Shelby Savings Bank.

This gave the membership approximately 24 days to study 141 pages of complicated information and to try to understand what was happening to a mutual savings bank that had assets of slightly over $100 million, deposit liabilities of some $88 million, and tier 1 capital of $11,206,000, and I was very concerned over the treatment of the members in this prospectus and proxy statement, and began talking to some of the other members that I knew were members. It is difficult to find out who are members unless you happen to see people going in and out of the bank. You cannot get a list from the institution, and I can understand why because it is confidential on people's bank accounts.

The reason I wanted to talk to these people was to determine the level of opposition to this transaction, and any possible ways that we might try to stop it.

Now, as a result of these conversations, Larry Wilson and Edwin Ford and I along with a group of other members decided to voice our opposition publicly, and to try to inform the members of exactly what was being proposed. We were very hesitant to do that for a while, particularly Edwin Ford and myself, because we thought maybe it would be considered sour grapes on some people because now that we are out they were going to take this type conversion.

We sent a letter out to all the members, and the reason we were able to send this letter out to all the members was that Mr. Wilson found out from Mr. Worth that if we prepared information and presented it to the—and he approved that information—and we presented it to the savings and loan they were required to mail it if we paid the bill. Well, then we had to scramble around and see if we could raise the money, and Mr. Wilson will go into a little more detail as to how difficult it was for us to find out how much it was going to cost us, and it wound up costing us $4,700 I would have to admit, but I can also thank the board of directors of the savings institution, after they called it off they did refund our money. We asked for it, and surprisingly they gave it back to us.

I would like now to turn this over to Larry Wilson who can go into a little more detail, because he did a lot of the legwork. Being a little younger than Mr. Ford and myself, we let him do a lot of the hard work.

[The prepared statement of Mr. Palmer can be found in the appendix.]

Mr. PALMER. Larry.

STATEMENT OF LARRY WILSON, ESQUIRE

Mr. WILSON. Thank you, Mr. Palmer.

Mr. Chairman and Congressman Watt, my name is Larry Wilson, I am from Shelby, North Carolina. I am an attorney, but my

interest and my involvement in this matter was as a depositor in Shelby Savings Bank.

Like Mr. Palmer, I had a long-term relationship with Shelby Savings Bank. I have had one or more accounts with them for at least 25 years. I also have my home mortgage loan with Shelby Savings Bank, and by virtue of either of those two facts, that I am a depositor or that I am a borrower, that makes me a member under the North Carolina general statutes, and as Mr. Worth truthfully stated a while ago, the statutes are very clear in North Carolina—it says that members are the owners of a mutual savings bank, period. It does not say they are "kind of owners," or they are "quasi-owners," it says "owners."

I became aware of the details of the proposed conversion merger of Shelby Savings Bank in mid to late August 1993 when I along with other members received the proxy solicitation and prospectus package from the board of directors of the savings bank. I read the information very closely and, quite frankly, was appalled when I read the figures for the proposed compensation for the president, vice president, and board of directors that was being proposed.

This compensation, as Chairman Neal pointed out a few moments ago, is not comprised of one simple figure, but consisted of several different items, including salary, bonus, a category entitled "Other Compensation," enhanced retirement plan, a management recognition plan, employment agreements, increased director's fees, director's retirement plan, and a stock option plan, all of which in this case totaled something over $3 million depending on how you did your math and whether you used Mr. Worth's present value discount.

The so-called benefits to the members of Shelby Savings Bank consisted of, one, the opportunity to purchase CCB stock at a 15 percent discount, and a second item which was a charitable contribution to the community—not to the members, but charitable contributions to specified charitable organizations in the community of up to $500,000.

As a member, I did not feel this was fair compensation to the membership, and, more importantly, I did not feel that it was fair to take away the option of the membership to purchase stock in the institution had it decided to go with a straight stock conversion, and I am glad to hear Congressman Watt question the idea of the process of this whole thing. I think that is where the problem lies, and one of the biggest problems that I see is that—and it may be built into the system, but because of the secrecy required of the board of directors there is no consultation with any of the members during any of this plan formulation; it is just presented at the last moment to the members for their approval or disapproval, and at no point are they consulted in the process.

Not only that, but they may not even be aware that this process is ongoing, and it seems to me highly unlikely that the members would be able to "vote directors onto the board that think like they do" if the members are not even aware that this process is going on.

I will skip over most of the details of how we came about our opposition, but I did find in the North Carolina Administrative Code a regulation requiring the bank to send out a letter (from members

who were willing to foot the cost of the bill) to all of the membership. We took advantage of that provision, and according to Mr. Worth (who had to approve our letter), and anyone else that I have spoken to, we were the first such opposition group that took advantage of this provision. We were probably the first ones that knew about it, because, like I said, it is buried in the North Carolina Administrative Code, and if you have never had the opportunity to explore that set of documents, it is quite confusing.

For the rest of my time I would like to go on to some recommendations that Mr. Palmer and I and others in our group feel are important for your consideration as you consider this proposed bill.

We think that the proposed——

Chairman NEAL. Let me stop you just for a minute, if I may.

Mr. WILSON. Yes, sir.

Chairman NEAL. We are very interested in those recommendations, but we have a number of other witnesses we need to hear from, and if you will, please give me those in writing and we will have a chance to go over them, and let us have a little opportunity to hear from each of the witnesses. If we do not do that, we are just going to run out of time.

Mr. WILSON. Certainly.

Chairman NEAL. As I said and as you all know, we arranged with each of you in advance that you would have about 5 minutes apiece, and if we do not stick somewhat close to that we are just not going to be able to finish our hearing.

I do look forward to reading your recommendations. In fact, I think we already have them in your statement.

Mr. WILSON. You do.

Chairman NEAL. Thank you. I will hold questions until we have heard from all the witnesses.

Mr. WILSON. Thank you. I will yield to the next speaker.

Chairman NEAL. All right, sir. Thank you very much.

Our next witness will be Mr. Cary Allred.

STATEMENT OF CARY ALLRED, MEMBER OF OPPOSITION TO MERGER CONVERSION OF GRAHAM SAVINGS BANK, GRAHAM, NC

Mr. ALLRED. Thank you, Congressman. I appreciate this opportunity to exercise my constitutional right to petition the government for redress of grievances. [Laughter.]

I am a depositor at Graham Savings Bank in Graham, North Carolina, I am a resident of Alamance County, the home county of Graham Savings Bank.

In general, I would like to say about the merger conversion game that in North Carolina I believe that we have a legalized formula to rob a bank. The formula for this I would like to outline starts off—and, by the way *Forbes* magazine calls this "the merger-conversion game."

The first step in the process is to change a mutual savings bank or mutual savings and loan from Federal charter to State charter to avoid the more restrictive Federal supervision.

The second step is for the mutual savings institution management to solicit offers, quote-unquote offers, from hungry-for-growth

regional banks who are willing to make an offer to the mutual savings institution's board of directors in the form of free stock grants to officers and directors worth 15 percent of the value of the institution's net worth, not to mention other lucrative benefits. In return, the board of directors recommends to the depositors who are the legal owners by North Carolina General Statute GS54(c)–100, they are the legal owners, the board of directors recommends to them a simultaneous conversion of the institution and the acquisition of all the assets of the savings institution by the acquiring bank.

Sometimes a few crumbs are offered to the local communities in the form of so-called charitable gifts in order for the transaction to appear altruistic. Depositors may be offered a 15-percent discount on stock in the acquiring institution which has the effect of providing them with the capital of paying for the free stock grants that are given to the savings bank's officers and directors.

After the acquiring bank and the board of directors of a savings institution reach agreement on the transaction, the savings institution then publishes a small 4-inch, one-column notice of conversion in a local newspaper at a time when the depositors may not see such notice. How many people are going to see a notice of the size that Mr. Palmer held up on July 3, a vacation weekend?

The notice gives only rudimentary information, and provides no explanation of the ramifications that the members will lose their ownership in the mutual savings institution at the time of conversion-acquisition, yet the members are given only 10 days to respond in writing to the administrator in Raleigh.

After this notice is published, unseen by most members, a proxy statement is issued about 30 days prior to a so-called special meeting of members who in the interim may in my experience be led to believe they have no ownership rights or interest in their savings institution by advertising and statements made by attorneys for the bank and others.

Graham Savings Bank management ran a full-page ad several times and mailed it to all members saying that the members do not own the bank. That is contrary to North Carolina General Statute 54(c)–100. I was unaware of that statute until 1 day prior to the special meeting, and so obviously were the other depositors of the Graham Savings Bank.

The attorney for Graham Savings Bank made the statement to the *Almmance News* that the depositors are not the owners of Graham Savings Bank, never have, and never will be.

Now, when we had the special meeting I pointed out these misleading statements that were made, I pointed it out to the administrator in Raleigh, but yet they were unwilling to stop this transaction from taking place.

The depositors are at an overwhelming disadvantage to comprehend, communicate, organize, and adequately respond to a generally incomprehensible proxy statement, as you mentioned, Congressman Neal, which tells them that general proxies will be cast in favor of the proposed simultaneous conversion-acquisition.

Now, *Forbes* magazine asked the question why would depositors vote for such a lousy deal? The answer is they do not vote for it; the culprit is this little devil right here [indicating] called a general

proxy. The bank collects these general proxies over a period of time, and the people who sign them are sometimes senior citizens or elderly people who have no idea what they are signing, and they have no inclination that they are giving away their ownership in the mutual savings bank if a conversion-acquisition takes place.

In addition, the depositors must spend their own money to oppose their bank, their own institution management which is spending maybe $200,000 or $300,000 on legal fees of the bank's assets, and the owners, the depositors are having to use their own resources and money to fight and advertise against such a transaction.

If the management and board of directors succeed in their efforts, the only persons who gain from the transaction, who are guaranteed to gain from the transaction by the administrator's office in Raleigh are the board of directors and management of the savings institution who get the free stock grants, and the acquiring bank which gets a tremendous amount of assets. If you could get a $20,000 Cadillac for $3,000, you would certainly call that a steal, would you not? Well, they can get 20 million dollars' worth of assets in a savings bank for $3 million, and the Savings Institution administrator in Raleigh will approve it.

The depositors are being robbed of their assets, and the only way to stop it in general is to stop the use of the general proxies.

I am going to yield to my attorney. I would also like to ask you if it is possible to make this bill retroactive to January 1, 1993.

Thank you. [Applause.]

Chairman NEAL. Thank you.

Mr. ALLRED. I have a few other things I would like to say, but in respect for the subcommittee's time I will stop.

[The prepared statement of Mr. Allred can be found in the appendix.]

Chairman NEAL. Thank you, Mr. Allred. Thank you.

Mr. Clark.

STATEMENT OF DAVID CLARK, ESQUIRE

Mr. CLARK. Thank you, Mr. Chairman, Mr. Watt.

I did not know Mr. Allred was going to yield to me, he does not usually, but since he did I will make a few comments.

As he points out, the only people who gain from this are the management and the board of directors of the savings institution, and they gain—he talked about 15 percent—in our particular case they got $3 million in stock, plus paid taxes on the income, plus tremendous other benefits, so 15 percent merely is a drop in the bucket to what they really get.

The other party who gains in this transaction is the bank, is the acquiring bank. I have never been able to figure out what the acquiring bank pays. True, in the Graham Savings Bank situation it issued stock in the amount of $3 million, but is that a cost to the bank? It sold stock to the public, or rather to the members of the bank at a 15 percent discount, but is that a cost to the bank? All they are doing there is selling the stock, and they are getting the money to pay whatever expenses they may have with regard to the acquisition.

To the extent that they guarantee these high salaries, the payment of taxes, and so forth, I suppose there are some expenses, but it is a shell game. It is hard to figure out exactly what an acquiring bank does pay. I would submit to you it pays very little.

In the case of Graham Savings Bank, it paid—for $20 million in assets I do not know what it paid. It said in its prospectus that there was a negative net worth of $13½ million. Now, when you say negative net worth to me, that means that they got an asset for $13½ million less than it was worth, so I would assume that is an admission that it cost them $6½ million, but I do not know where the cost came in. I cannot compute it.

Now, Mr. Allred left off part of his statement, he feels that the congressional statute is itself inadequate. True, it regulates the greed which may motivate these transactions by placing the institution under Federal regulations, but the proposed statute as we read it does nothing to assist the depositors who, after all, are the owners of the bank, or anyone else in achieving benefits.

True, like I say, the Federal statute regulates the amount that the insiders can get, but it does not give the others anything, as has been pointed out by these gentlemen.

I might add a couple of things that the—well, we have talked about the regulatory body, and the chairman spoke to the effect that the statute requires that the administrator of the Savings Institution Division find—it must appear to him that the conversion will be fair and equitable to the members of the savings bank, and no other person will receive any inequitable gain by reason of the conversion, and it must appear to him that the plan of reorganization must be fair and equitable to all members of the savings bank.

The administrator gives no consideration to questions of fairness. Counsel for the administrator in the presence of Mr. Allred admitted that the administrator does not even consider fairness and equity in this situation. Counsel for the administrator in my presence made the statement that the administrator views these transactions as if management of the savings institutions were its sole proprietors. This is clearly contrary to North Carolina law. It is similar to what they have been doing, it is similar to the ad that the institution ran that members of the institution are not owners, never have been, never will be, but it is not the law.

It appears to us that in North Carolina we have been reduced to a government of men rather than law. Recently, the administrator's office rendered an opinion that Mr. Allred and a fellow depositor in Graham Savings Bank, Maurice Koury, were not, quote, aggrieved parties, and did not even have standing to challenge the transaction by which Graham Savings Bank was to be taken over by CCB. In other words, as Congressman Watt was pointing out, there is no forum for the depositors; we are not aggrieved people according to the administrator's opinion, and we have his opinion with us today if anybody wants to look at it, but according to that opinion the depositors are not aggrieved parties. The only aggrieved parties I would assume are the banks who are trying to acquire the institution, and perhaps management of those banks, so that this indicates that there is no recourse for the depositors in this State, except to go into court, and I might say that is where we are with the Graham Savings Bank.

I notice that the statement by the president of CCB says that they have acquired Graham Savings Bank. I would certainly differ with that. That matter is very much in court at this time, and we believe the courts will void the transaction.

Mr. Allred has outlined in an affidavit which he filed with his statement that he suffered a number of untoward situations in dealing with the administrator's office. For example, this is the most—this is the grossest example, one of the grossest at least, the administrator—Mr. Allred had organized opposition to the merger of Graham Savings Bank to the extent that persons were coming to the bank to get back their proxies that had been voted, or that the bank management could vote in favor of the transaction, so people were coming in and getting back their proxies.

The meeting was set for September 21. On September 20 about midafternoon the management, persons in management and the board of directors of Graham Savings Bank called Mr. Allred into the office and said: "Listen, here is what we are going to do for these depositors, and we want you to go along with us. We are going to put 1 percent, we are going to add 1 percent to the total of each savings account in our bank, for anybody who was a depositor at July 1, 1993 we are putting an additional 1 percent in the bank, and if they are still depositors next July we will put another 1 percent in, provided they do not put any more money in," so in effect they were buying, they were seeking to salvage this transaction with a last-minute, quote, bribe of the, or a last-minute sweetening of the pot for the depositors.

Well, now, Your Honor, that does not comport with due process of any kind. Here you have a plan that has been published, and has been opposed by Mr. Allred as he had a right to do, as has been pointed out by the gentleman from Shelby, he had a right to oppose that plan in writing, which he did, and less than 24 hours before the vote the management knowing they are in trouble with their plan they change it, they sweeten it, and they are taking credit here today. I notice the statement here today, they say: "Well, we give the depositors something." You know why they gave the depositors something, the plan was about to go down the tubes, and so but notwithstanding the timeframe and that Mr. Allred had constitutional due process rights to have his view of the transaction out in front of the depositors, the administrator through his counsel allowed an amendment to that plan to take place less than 24 hours before the time of the vote, and the vote passed by—and in news articles management admitted that they used that sweetening of the plan—actually Mr. Allred turned it down, he said "No way, that is still not enough money," and they said "Well, OK," so they sweetened the plan by 1¼ percent on the existing deposits and 1 percent on the deposits at July 1, and then published it in the paper and called people up telling them they were doing this, got them to change their proxy votes. They used those votes at the last minute to get the thing through.

How the administrator could possibly approve such a gross, you know, change in the plan, or a violation of due process is beyond me.

Chairman NEAL. Mr. Clark, excuse me just a second. I appreciate your testimony, but I think we are going to have to move on a little bit here.

Mr. CLARK. All right.

Chairman NEAL. I do appreciate it, and we will put any additional statements you would like in the record.

Mr. CLARK. Could I make just one more statement?

Chairman NEAL. Yes, go ahead.

Mr. CLARK. We talked about, and you gentlemen have talked about the fact that there is a direct conflict of interest here, and every director who recommended this plan in the Graham Savings Bank benefited from it, and we think—and this may not be a matter for Federal concern, but we think that before a member of a board of directors votes in favor of a transaction such as this that he should not be one who is going to benefit from it, and we think that the statutes of North Carolina require that, but the administrator ignores them.

Chairman NEAL. Thank you very much. We have some questions along those lines, too, and I thank you for raising that.

Our next witness is Mr. John Kennedy. Mr. Kennedy.

STATEMENT OF JOHN A. KENNEDY, CITIZENS FOR FAIRNESS, FOREST CITY, NC, A DEPOSITOR GROUP OPPOSING THE MERGER CONVERSION OF FIRST SAVINGS BANK, FOREST CITY, NC, WITH CENTURA BANKS, INC

Mr. KENNEDY. Mr. Chairman, Congressman Watt.

My name is John A. Kennedy, not John F. Kennedy. As a group of individuals from Rutherford County, North Carolina, joined together as Citizens for Fairness we support and applaud efforts to curb the abuse of fiduciary duty by officers and directors.

Bill H.R. 3615 is a vital step forward in attempting to remedy this existing and ongoing process. This bill, had it been in effect this past year, would have drastically changed the outcome of the First Savings Bank of Forest City/Centura Bank merger. While this bill may not cure all the problems, it certainly will help or postpone the problems until further action can be taken.

The merger-conversion of First Savings Bank of Forest City and Centura Bank is a classic example of what money paid to a few individuals can do. The officers and directors agreed to sacrifice a strong and respected mutual savings and loan with the sole purpose of satisfying their own greed at the expense of trusting members.

Sufficient understandable material was not available for the average member to understand. The pertinent information was hidden in a 90-page booklet and, as a result, most members just gave up and voted as a result of the urging of the board of directors.

Many members just gave up and threw their proxies away, characterizing the frustrations felt by the average member in trying to decipher the complicated and often conflicting information in this 90-page booklet, and as a member, I do not think I should have to stop at any point in this process and consult counsel to find out if I am being treated fairly.

It should be pointed out that if an eligible voter had signed a previous proxy this may have been used as a vote in favor. If a pre-

vious proxy had been given, that eligible voter had to revoke said proxy and then cast his vote. The voting system is highly suspect, and it is very possible that insider trading has taken place.

Only approximately 33 days was given between the mailing of the information booklet and the general meeting. As a result of this limited time schedule, efforts to make known the process and the true purpose of this were severely hampered. The press only became involved in this situation after the fact.

Our efforts were severely hampered by this process. A petition to the directors was ignored, and at the general meeting a motion to delay was easily defeated due to the voting process.

As concerned depositors, we were severely handicapped by not having names and addresses of the membership of First Savings. Time was not sufficient, and resources were not readily available to make a difference.

Now, the compensation to officers and directors is astronomical. Think about it, the fact that John Perkins was given more than $1,250,000 in this process. Following the first announcement of the proposed merger-conversion he was given a car, a new Buick Park Avenue for his use by Centura. Tell me this is not a breach of fiduciary duty.

Juanita P. Newton, vice president and secretary, more than $400,000 plus a lucrative contract. Five directors, $500,000 each; one director more than $300,000.

The above information far overshadows the possible remuneration available for eligible members. They were offered the chance to purchase Centura stock at a 15-percent discount, or receive a 1-percent bonus on their savings account with the bonus being figured on the lowest amount during the following year. What a windfall.

Too, the information shows how over the years the rights of mutual members have been obscured with the officers and directors increasingly treating the assets of a mutual savings and loan as their own personal property. From our standpoint, the merger-conversion process has been used as a tool to deprive the members, the true owners of a mutual savings and loan, of their pro rata share of its sale value. The local community has been deprived of a local and highly profitable institution. Fraudulent intent appears to be evident in this transaction.

Centura's own appraisers set the value of First Savings at $13 million, of which $12 million was retained earnings. Centura accomplished this so-called purchase with the sale of a new issue of stock. A portion of this stock was reserved for the officers and directors. It still left approximately $8 million for Centura. This $8 million and the $12 million in retained earnings has gone to Rocky Mount, North Carolina.

At this point we do not wish to hear about the foundation set up by Centura, this is merely a bookkeeping entry.

The above information points out the necessity for legal steps to be taken, if necessary, to protect the members of the mutual savings and loans.

I defer or yield to counsel.

[The prepared statement of Mr. Kennedy can be found in the appendix.]

STATEMENT OF MIKE CALHOUN, ESQUIRE

Mr. CALHOUN. I am Mike Calhoun, I am an attorney representing the Citizens For Fairness.

Chairman Neal, I appreciate your interest in this important issue to North Carolina. This summer I had the opportunity to work with you on housing issues which have brought about the addition of approximately $80 million in low-income housing funds through the Wachovia Banking Program. I know that you have worked hard to make the banks work for both consumers and businesses, and I am pleased that my Congressman, Congressman Watt, is here today also.

There is compelling public and Federal interest in this issue. You used the numbers of the *North Carolina Business* article. Approximately $500 million of owners' net worth has been taken away in the conversion acquisitions that have been approved to date. If the remaining institutions continue in that trend, the total will come close to $1 billion of owners' interest that is taken away.

The Federal interest is equally compelling, because that net worth was built up, and only possible for it to be built up with the Federal guarantee of those savings and loans deposits, a guarantee which came at no small cost to both the government and the taxpayers, and so it is more than appropriate for the Federal Government to proceed to protect the net worth that it helped build up here.

There has been talk about a democratic, so-called democratic process in votes on the merger plans. Let me share with you just a little more information about that process.

In the Forest City situation Centura has indicated it did not use general proxies, but it is important how they acquired specific proxies. The management using bank money first of all sends out the notice; the most prominent thing about the notice in the largest print, repeated the most times is "The board of directors unanimously recommends that you approve this merger-conversion." But they did not stop there.

Again, using bank money they hired a public relations firm to individually contact members of the bank and solicit proxies. That public relations firm submitted their script, as they are required to do, to the administrator. Again, the most prominent part of that script is that "The board of directors unanimously recommends that you approve this transaction."

Nowhere in any of this information are relevant details and critical facts that anybody would need. Nowhere do they say that there is an alternative, that you could approve the sale but, as Congressman Watt has suggested, you could divide up the proceeds of the sale very differently. One way may be to make this a two-step process where you do not set compensation to the officers and directors at the same time you approve the sale. If it is truly in the best interest of the institution, why not make those separate decisions where you approve the transaction and then in a truly democratic fashion you decide how the proceeds are distributed.

The regulators have tried to draw analogies of the Securities and Exchange Commission and disclosure, and I submit those analogies just do not make it. The fiduciary duty to the owner of an institution is not mere limited disclosure, there are substantive duties.

You can see that in the headlines today of the Delaware Supreme Court's action in the QVC–Viacom battle. There they ruled the board of directors cannot stack the deck by limiting the options that are presented to the shareholders. They have to not only present options to shareholders, they are under a legal duty to present the option that is best for the owners. Nowhere does that happen in this process. Even if you had a closed corporation not governed by the Securities and Exchange Commission, minority shareholders have rights. You cannot take away their ownership interest without fair compensation.

Here they are arguing that a lesser standard applies to these federally regulated and supported banking financial institutions, and we submit that the public rightfully expects that these institutions are held to a higher fiduciary duty.

Their main argument is "Well, we have done better than a lot of the stand-alone conversions where a few people have bought stock." There are big-time problems with the stand-alone conversions, and I recommend that you address those. There are several options available, you can require transfer of stock without purchase to depositors so that they are not required to do that, or you can require compensation in the form of increases to depositors' accounts in lieu of stock. There are things you can do to improve stand-alone conversions, but they do not justify the abuses that these merger-conversions have shown here, and I think have shown quite clearly.

Our committee endorses H.R. 3615. We would suggest that any ways to make it retroactive beyond November 22 should be explored. Also, there should be a recapture, or at least some limitation in accounting for how these institutions are accounting for their extraordinary payments to the officers and directors.

There is precedent. We have seen limitations from Congress in the deductibility on Federal income taxes of improper compensation, or excessive compensation such as executive salaries of more than $1 million. Those same kinds of limitations could be imposed here where funds have been diverted from these institution.

Again, I applaud your interest in this critical issue.

Chairman NEAL. Thank you very much, Mr. Calhoun. I appreciate your thoughts on it.

Our next witness, Ms. Evelyn Surratt.

STATEMENT OF EVELYN SURRATT, MEMBER OF OPPOSITION TO MERGER CONVERSION OF HOME SAVINGS BANK, ALBEMARLE, NC, WITH BRANCH BANKING & TRUST CO

Ms. SURRATT. I am a member of the Home Savings Bank in Albemarle, North Carolina, and I have been a member since the 1970's, and now they are selling to BB&T. I do not think the officers and directors are doing right by us.

It looks to me like they are looking out for themselves instead of us. They should treat the people right who stuck by them all these years.

The statute says we are the owners. I have seen it, it is plain, anybody can understand it. I will read it to you: "Members are the owners of a mutual savings bank." But they have got all these

high-powered experts trying to tell us that the law does not mean what it says. That is just not right.

A lot of folks in Albemarle might not have a whole lot of education, but we are smart enough to know right from wrong, and this is every bit as wrong as my preacher and deacon sold my church and pocketed all the money. [Laughter.]

I am not just speaking for myself. I have talked to a lot of people who are real upset over this thing. Now, whether they will speak out or not I do not know, but they do not like it.

Most of them do not even understand what the deal is. People in Albemarle are not Wall Street bankers, they would never know what is happening down at Home Savings if it was not for the newspapers.

Lawyer Blalock gave me some proxies from other savings and loans in other towns. I can tell you that 9 out of 10 people in Albemarle will throw them away because they are just too complicated to read. I could not figure out the proxy I read. I know how the deal works because of the newspaper article and what Lawyer Blalock has told me, but I would have never figured it out from the proxies.

For example, I would have never figured out that BB&T was getting millions of dollars free, but that is important to know because BB&T has never done one thing for Stanley County, yet it has taken millions of dollars away from us, millions of dollars that poor people in Stanley County struggled over 80 years to save up.

Likewise, I would have never figured out that Home Savings got a proxy from me way back when I opened my account. That is important, too, because the officers and directors can turn around and use it against me if I do not stop them.

BB&T and Home Savings tried to make it right by giving a couple million dollars to charity. Well, charity is good, and I am all for charity, but charity did not build Home Savings and Loan, us members built it and owned it, but if they are not going to pay the owners they should give all the money to charity, not just a couple million dollars, and it should be local charity, not charity off somewhere else.

Before I finish, I want to thank you for helping the little people. I am talking about hard-working people who have tried to live right and do not take advantage of anyone. It seems like nobody tries to look after them these days, but you are looking out for them, and I am obliged to you. These people do not have any way of fighting these big banks unless you fight for them.

Thank you.

[The prepared statement of Ms. Surratt can be found in the appendix.]

Chairman NEAL. Thank you, Ms. Surratt.

Dr. Eddins, did you want to make a comment?

STATEMENT OF GEORGE E. EDDINS, JR., M.D.; ACCOMPANIED BY STEVEN BLALOCK, ESQUIRE

Dr. EDDINS. I am Dr. George Eddins, and I am a retired internist. Thank you for allowing me to testify before your subcommittee.

I have done business with Home Savings Bank since 1951, and I have retirement money on deposit there over and above what is insured by FDIC. Therefore, I have an investment risk, yet I will receive no compensation for my ownership interest in Home Savings.

On the other hand, the officers and directors who are not at risk and have no ownership interest by reason of their offices will be paid millions of dollars. This is the main problem I see with Home Savings Bank selling to BB&T, somebody who is not at risk is getting rich, quite rich.

These men have been compensated over the years for handling the affairs of the savings bank. They have set their own salaries, and I assume that they paid themselves what they wanted. They were never at risk, but I was, yet they are the ones receiving compensation.

True, BB&T may pay an extra percentage point of interest if I leave my money there for 1 year after they sell out, but this is not compensation for my ownership interest or the risk that I have borne. It is just a marketing gimmick to get me to leave my money there. Besides, the newspapers are reporting that 1993 was a banner year for bank profits. They should have spread a little of that profit around and paid me an extra percentage point already.

True, they are also offering BB&T stock at a discount, but this is not compensation for my ownership interest or the risk that I have borne either. It amounts to nothing more than dangling a carrot in front of me, and I do not like carrots.

I do not want BB&T stock. Even if I did, I would have to take money out of savings to buy it, and I do not want to do that.

Although I could afford to do so if I wanted, many of the depositors just simply could not afford to do it even if they did want. Besides, they are going to sell BB&T stock at a discount to anyone who lives in Stanley County, whether they are members of the savings bank or not. That does not sound to me like it was designed to be compensation for anybody's ownership interest.

I have known everyone at Home Savings for a long time, I trusted them implicitly. Until I learned about this deal I had assumed the officers and directors were going to look after my interest in the future as they have in the past. Now I no longer think so.

The statutes say it is a conflict of interest for an officer or director to have a financial stake in anything that comes before the board, but I am afraid they are becoming millionaires at my expense and the expense of the other owners. It does not even appear that they will be explaining their deal fully.

I am a well educated person, but I do not feel that I understand all that I need to know about this deal. I have read proxy material from other deals, but I do not feel that I understand them sufficiently to know what I need to know. If I were to understand it truly I would have to have a Philadelphia lawyer, or maybe an Albemarle lawyer. If I do not understand it, I think it is safe to say that many, if not most people in Albemarle do not understand it either.

Thank you on behalf of myself and all the other members of Home Savings Bank for being interested in what we have to say.

[The prepared statement of Dr. Eddins can be found in the appendix.]

Chairman NEAL. Thank you, Dr. Eddins, and thank all of you.

Let me ask this question. How—and I would like to have several of you respond—how have you been disadvantaged in these transactions? I mean, we can look at one case and say it does not seem quite fair that the officers and directors are getting all of this money, but has that hurt any of you all in any way?

Mr. PALMER. I doubt if it has hurt any of us individually because they received all the money. I think it has hurt the membership as a group because they have received virtually nothing. In our instance with Shelby Savings Bank there was no 1 percent or half percent or anything else offered to the depositors.

Some of these percentages have come about after we defeated ours. You know, they canceled ours the night before. One of the directors called us that night and said "We have called it off," but personally it has not affected us, but it has affected the community, and——

Chairman NEAL. In what way? How has it affected the community?

Mr. PALMER. In the fact that in Shelby we are blessed with banks. Our county is only 86,000 people, and we have every bank there except Nations and Wachovia I think, and all good banks. We have several—two local banks that are owned wholly by people in Cleveland County, and one of them has a branch in Rutherford County.

It is taking the money and sending us another bank. Now we will have only one savings institution, savings bank in Shelby, and that is Shelby Federal Savings Bank, a bank somewhat smaller than ours which is Cleveland—excuse me, Cleveland Federal Savings Bank—it is a stock, they went stock. They earned more last year than the stock cost when they went stock 10 years ago.

Now, they say that a small savings and loan cannot operate. They are doing very well, they have no thoughts of selling out——

Chairman NEAL. I am trying to understand, though, I gather you are saying that the community is generally disadvantaged because the competition has been reduced by one institution, there is one less——

Mr. ALLRED. The depositors, Congressman, will lose the opportunity to shop for higher interest rates on their deposits.

Chairman NEAL. There will be less competition in the community.

Mr. ALLRED. Yes, sir. And I do not mean that—at the same time that, for instance, Graham Savings Bank was paying over 3 percent, which is a very pittance of an amount to begin with on money market accounts, CCB was paying in the same county 2¼ percent on money market accounts, so if CCB buys—if they do get Graham Savings Bank, do you think they are going to compete with themselves? Do you think that they are going to continue to pay a higher interest rate after 3 years at Graham Savings Bank than they are paying at their other institutions?

Mr. CLARK. Mr. Chairman, I would suggest another way that the owners are disadvantaged, they would be disadvantaged in the same way that stockholders in a public corporation would be dis-

advantaged if the board of directors of the corporation had the right to sell out with all the benefits going to the board of directors.

There is a two-step process in North Carolina. There could be a simple stand-alone conversion from a mutual savings bank to a stock savings bank, that would be all there would be, and stock would be issued to the depositors under a particular formula. Then it would be a stock-owned institution.

Later down the road if those same stockholders were offered a merger opportunity with another bank, they could then vote on that merger opportunity with another bank, and that has happened on several occasions in North Carolina. There has been some allusion to that, but there are a number of occasions, and there have been some published reports about it where a stand-alone conversion has occurred, and then a year or so later the stockholders in that savings bank sold out or merged with another bank and made substantial profits on the stock.

Chairman NEAL. So your point is, and several of you have made this point, that you think the North Carolina law says that the depositors are actually the owners. The administrators in their testimony said, as I recall they said that is an interesting question, they did not see it that way.

Now, the law, I just read here in the law—this is under paragraph 54C–100, and it says that the membership of a mutual State savings bank shall consist of: (1) Those who hold deposit accounts in the savings bank; (2) those who borrow funds and so on, and then it goes on and in the last sentence says ". . . members are the owners of a mutual savings bank." I do not know, this may not be—that may not be as clear as it should be. [Laughter.]

Mr. CLARK. Mr. Chairman, as Senator Erwin used to say, if you understand the English language it is pretty clear.

Chairman NEAL. He said that was his native tongue.

Mr. CLARK. That was his native tongue.

Chairman NEAL. Well, I do not know, it sounds fairly clear.

We have also this question about the directors. The administrator's representative said that the directors were there to look out for the members who are the depositors and borrowers, and yet one of you said that the directors had imposed some sort of gag rule that they would not talk about this. Who said that, Mr. Palmer?

Mr. PALMER. I did, sir.

Chairman NEAL. How could they do that, if they are supposed to look out for——

Mr. PALMER. Well, I will have to let CCB answer that because that is where they said they got the information, and from their attorneys that they were told not to discuss any of the details on this——

Chairman NEAL. With the depositors——

Mr. PALMER. With anyone.

Chairman NEAL. Who are the owners; right?

Mr. PALMER. Yes, sir.

Chairman NEAL. And they should not discuss that with them?

Mr. PALMER. Yes, sir, and not once but several times, not only the CEO but also a couple of the directors.

Chairman NEAL. Mr. Wilson.

Mr. WILSON. I was just going to clarify, my understanding was that there are regulations that prohibit the discussion of this matter prior to the time of publication and distribution of the prospectus and proxy statement.

I think perhaps what Mr. Palmer is referring to, there may have been some confusion on the part of some of the directors at Shelby Savings Bank that that gag rule carried on until after the time of the distribution.

Mr. BLALOCK. Mr. Chairman——

Chairman NEAL. Yes, sir.

Mr. BLALOCK. If I may, I would like to follow up with the gag rule, please.

I am a lawyer from Albemarle, North Carolina, and I heard what the administrator and his staff had to say about the importance of making all the facts known.

However, in our particular case I have to report that I was called into the office of counsel for Home Savings Bank and threatened, and was told that a complaint would be filed with the administrator because I had spoken with the press about this matter.

That complaint was in fact filed. I would have to take exception to what the administrator said about the desire to make all of the facts known publicly.

And if the subcommittee wishes, I have copies of the complaint letter and my response here.

Chairman NEAL. If you will give us that, we will make it a part of the record.

Mr. BLALOCK. Yes, sir.

[The information referred to can be found in the appendix.]

Mr. KENNEDY. Mr. Chairman——

Chairman NEAL. Yes, sir.

Mr. KENNEDY. To digress and go back to the previous question——

Chairman NEAL. Yes, sir.

Mr. KENNEDY. If we look at this merger-conversion process, it is in essence a liquidation process, and therefore we as members have been denied our pro rata share of the benefits.

Chairman NEAL. So your point is that as a member you are an owner and that you should share in the profits, if there are some to be made, and that that is how you are disadvantaged? Is that your point?

Mr. KENNEDY. Yes, sir.

Chairman NEAL. But that is not the position of the administrator's office as I understand it——

Mr. CLARK. That is not.

Chairman NEAL. Because their position is that there should be no interference in the activities of the owners, the directors and officers, as I understand their position.

Mr. CLARK. They view management as the owners, your Honor.

Chairman NEAL. Pardon me?

Mr. CLARK. As I understand their position, they view management of these savings banks as the owners, as sole proprietorships. That has been their concept of ownership. I was told that personally by them.

Chairman NEAL. By the administrator's office?

Mr. CLARK. By the administrator's office, that is correct.

Mr. CALHOUN. Mr. Chairman, in the Forest City case there were statements by the directors of the Forest City Savings Bank that they were entitled to the net worth of the bank because the net worth had been built up while they were directors.

Mr. ALLRED. Mr. Chairman, the Graham Savings Bank management wanted people to believe that they were entitled to 15 percent of the bank's value because they had built up the assets to $108 million. In response to that I would say that First South Bank in Burlington, that was done over a 40-year period of time by their management.

First South Bank in Burlington started in 1988, and they have assets of $118 million. I do not know if that says anything about the building up of the value of a bank and whether they should get 15 percent of the value of the bank or not, but they want us to—they want the depositors to believe two things.

They want us to believe that they should be rewarded for building up the bank's assets, and at the same time they tell us that we need to sell the bank because the savings and loan and the savings bank is not going to continue to prosper. They tell us that the savings banks are not going to be viable. If that is true, you cannot have it both ways.

Chairman NEAL. I am just trying to understand this. It seems to me that the difference of opinion here has to do with who owns it and who is entitled to the benefits of ownership, and what the fiduciary responsibilities of officers and directors are.

Is that a fair assessment of what the issues are?

Mr. CLARK. I think that cuts to the heart of the issue.

Mr. WILSON. I think that, as well as the process that Congressman Watt refers to, and the mechanisms within the system that afford us or do not afford us as depositors protections and information.

Chairman NEAL. Well, of course, if you have no interest in it, then you are not entitled to any information anyway, are you? Would that be correct?

Mr. CALHOUN. Mr. Chairman, I think the North Carolina statutes are—again for anyone with English as their native tongue are explicit on that. Section 54C–103 says "Officers and directors of State savings banks shall act in a fiduciary capacity towards the savings bank and its members or stockholders."

The law says what that fiduciary duty is and to whom it is owed. We have had a wholesale violation of that fiduciary duty with approvals by the State regulators who are supposed to prevent it.

Mr. CLARK. And yet according to the State regulators we are not aggrieved parties.

Chairman NEAL. The following paragraph in the State statute, by the way, also says that each director, officer and employee of a State savings bank has a fundamental duty to avoid placing himself in a position which creates, or which leads to, or could lead to a conflict of interest, or appearance of a conflict of interest having adverse effects on the interest of members, customers, or stockholders of the savings bank, the soundness of the savings bank, and the purpose of this chapter.

Mr. ALLRED. Mr. Chairman, if the law were enforced in North Carolina, we would not have to be turning to the Federal Government for supervision, but the bottom line that I see is that we in North Carolina have been reduced to a government of men rather than of law.

Chairman NEAL. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

I will ask just a couple of questions because I know we are on a tight time constraint.

It was interesting to me that Mr. Palmer had been a director of Shelby Savings and Loan Association up until 1989, and that this merger or this transaction took place in April 1992, or at least it started in April 1992, and I thought it might be interesting to have Mr. Palmer and Mr. Wilson comment briefly, if they would, on how Mr. Palmer's interest may have been substantially different had he continued to be a director in 1992 as opposed to having aged out and had to go through mandatory retirement.

Would your interest have been different in terms of benefit, and would your interest have been different in terms of responsibility had you continued to be a member of the board?

Mr. PALMER. Yes, sir, I think so, and let me just give a little background here.

There were three directors that retired under this 70-year retirement, and that was recommended by the Federal Home Loan Board in Atlanta, and we adopted it. Some did not adopt it.

I got off the board when Mr. Ford who had been on for 43 years got off the board, and when another director who had been on for 15 years got off the board. They immediately—and we did not find it out until a year later, they changed the bylaws so that you could stay on until you were 75, because the then chairman of the board was going to go off the next year.

Well, we thought something was going up then when all that happened. We had proposed that we go stock some time earlier, and management did not want to go stock, said it would be very difficult to do and to sell the stock, and so forth.

But, yes, I think I would have been in the same position, and I am sure Mr. Ford would have, too—he is here and can speak for himself—but the depositors were mistreated on this attempted transaction in my opinion. The directors and management just received too much.

It is good to get a bonus, but not the bonus they were getting.

Mr. WATT. Do you feel like if you had remained on the board that you could have properly represented the interest of the owners in this transaction if you had been offered the kind of monetary package that the board members were offered?

Mr. PALMER. It is hard to say what I would have done because it was not offered, but I hope that I would have not accepted that type transaction.

Mr. WATT. How much did they get?

Mr. PALMER. They got over 3—well, 15 percent of the net worth, and the net worth was over $11 million.

Another thing, one reason I am so aware of the general public, I have been in your position on a smaller level, I have served in the General Assembly of North Carolina for three terms, elected

not to run again; I have served as commissioner in our county for 12 years and elected not to run, 10 of which I was chairman, and therefore I—and I am in the funeral business so I know people and like people, and I am used to dealing with people, and I think the people were not treated properly.

Mr. WILSON. I would like to address your question, and here I may differ in my position a little bit from Mr. Allred and some of the other panel members.

I do not feel that in all cases these directors of these savings institutions are looking and saying "How much can I get for myself?" I think it is much more complicated than that.

I think that the advisors, the consultants, everyone in the industry is geared toward making these types of transactions go because that is their payroll, that is where they get their income from, and so they have a bias toward making them go this way. So all the information that is presented to these directors who are told they cannot discuss it with anybody else outside the board, it is all geared toward making them think that this transaction is the only way to go, and, "By the way, we are going to give you 15 percent of the net value which is just a little added bonus."

Mr. WATT. Mr. Clark, you indicated that the administrator had determined that you and other owners or depositors in your institution were not aggrieved parties and could not participate in the proceeding that was going forward before the administrator; is that correct?

Mr. CLARK. What happened there, Mr. Watt, is that Mr. Allred voiced his objections to these proceedings throughout, and as I said earlier, when it came time for the vote they changed the deal on him so that he did not have an opportunity to voice his objection to the deal as it was last put to the members, and he and Mr. Koury employed us to appeal the decision of the administrator to the extent that the administrator was allowing this conversion-acquisition to go forward, and we filed with the administrator an appeal, a request for public hearing.

In the statute there is a provision that calls for a request for public hearing. We filed a request for public hearing, and the administrator said: "Well, we have never had a request for a public hearing before, I want you to brief whether or not you have the right to it," so we filed a brief, and attorneys who said they represented Graham Savings Bank, although they said they were not a party to our request for public hearing, filed a brief, and, lo and behold, the administrator came down almost word for word with the opinion of the attorneys for Graham Savings Bank, holding in effect that Mr. Allred and Mr. Koury although they were depositors and owners of the bank were not aggrieved parties—despite provisions in the statute such as Mr. Calhoun just read you about the fact that the administrator is to protect the interest of these people—were not aggrieved parties, did not have standing to challenge these transactions.

They said in effect that they were not, quote, specific identified parties. The statute calls for an appeal or a request for public hearing by, quote, specific identified parties. They said that we were not, that Mr. Koury and Mr. Allred were not specific identified par-

ties. That has reference to rulemaking rather than to controversy, and so we then——

Mr. WATT. I am sure you as their counsel feel like you had standing and were an aggrieved party at the administrative process.

Is it clear going forward into the Superior Court that you will have standing at that juncture?

Mr. CLARK. Well, that matter is for hearing in the Superior Court at this time. We have not had a hearing on the matter, but as Congressman Neal pointed out English is my native tongue, and I do not see how it can be read any other way.

Who is the administrator supposed to protect? Who are these statutes and regulations supposed to protect, unless it is the depositors and the borrowers and the other owners of the institution.

The position of the administrator is apparently that the only protection afforded to anybody is the protection afforded to the management of the institutions, and to the acquiring banks. They are the only persons that the institution has had a willingness to listen to at this point.

As you pointed out earlier, there is nobody at the bargaining table who represents the members. I mean when this deal is struck, it is struck in secrecy, and there is nobody there to represent them, and if our people are not aggrieved I do not know who is.

Mr. WATT. Thank you, Mr. Chairman.

Chairman NEAL. Thank you, sir, and thank all of you. You have done a very fine job in presenting your side of this issue, and I thank you again for being with us today.

Mr. ALLRED. Thank you.

Chairman NEAL. We have one more panel.

If I can, let me mention that we will take a 5-minute break here while the next panel is getting set up. We will be back at 1 o'clock, or a minute or so after.

[Recess.]

Chairman NEAL. I would like to again call the hearing to order.

We now would like to welcome our third panel, and this panel will be comprised of Mr. Cecil Sewell, president and chief operating officer, Centura Banks; Mr. Ernest Roessler, president and chief executive officer, Central Carolina Bank & Trust Co.; Mr. John A. Allison, chairman and chief executive officer, Branch Banking & Trust Co.; Ms. Juanita Newton, city executive, Centura Banks, Inc., former vice president of First Savings Bank, Forest City, North Carolina; and Mr. Carl "Buck" Hill, president and chief executive officer, Home Savings Bank, Albemarle, North Carolina.

I would like to welcome all of you this morning, thank you very much for being with us, and unless there is some objection we will just hear from you in the order in which I called your names. I do not hear any objection to that, so we will do it that way.

Now, we will put your entire statements in the record. The hearing is already running a little later than we thought it would. As previously arranged, please try to keep your remarks to about 5 minutes or so, and then that will leave us a little more time for questions and answers.

If that is not possible—I do not want to shut off any debate here, if you take another minute or two please do not worry about it, but

we are just trying to give ourselves a little opportunity to learn as much as we can about this subject.

Mr. Sewell, let us start off with you.

STATEMENT OF CECIL SEWELL, PRESIDENT AND CHIEF OPERATING OFFICER, CENTURA BANKS, INC.

Mr. SEWELL. Thank you, Mr. Chairman. Representative Watt and members of the subcommittee staff.

Good morning, good afternoon. I want to thank you for the opportunity on behalf of Centura to speak to you on the subject of conversion mergers, and more specifically H.R. 3615. I promise you in Rocky Mount we know what 5 minutes is, and I will do my very, very best to stay within that.

In keeping with that, what I would like to do is to make some points, not try to necessarily substantiate all of them. I believe that is done in our written testimony, and as well would be most happy to address anything that piques your interest in the question and answer session.

First of all, to address quickly Centura's experience. In the past 3 years we have completed 15 acquisitions, 6 of those were merger-conversions, 3 were completed under the OTS scheme, and three under the State savings bank scheme, so we feel we have interesting perspective in having done these transactions under both.

We think the issues you should consider these transactions under are first the environment under which we are operating. There is a great deal of competition from nondepository lesser regulated institutions. All of us in the industry are having to reevaluate the way we do business, the resources we have to bring to bear, and our management expertise.

I think it is understandable, particularly to this subcommittee, what smaller mutual institutions with a limited product line are going through, so I believe that we all would admit that consolidation within our industry is a natural occurrence and is something that brings me to my next point, which they are in the public interest.

We believe that safety and soundness is of paramount importance. A few years ago safety and soundness was talked about a great deal. It seems to be something we have forgotten today.

By consolidating strong financial institutions we feel that safety and soundness is assured, and we think that is evident by the branch banking that has gone on in North Carolina for hundreds of years, and that where there has been unit banking and a lack of consolidation that has not been the case.

Second, we believe that a number of very strong competitors competing in the market serve consumers very, very well. We would point out, and we do in our written testimony, that there is empirical evidence that branches of statewide financial institutions typically have higher loan-to-deposit ratios than do stand-alone community institutions, and I would add that is achieved by making more loans, not reducing the deposits.

We believe that a competitive advantage that North Carolina has is a strong banking system, and we think that it is important that North Carolina not only have the large superregionals, but it also

have the second tier banks of which we are generally considered a part.

Next we feel that these transactions are in fact fair and equitable. They are negotiated at arm's length, there is full disclosure, which no matter how complex it may be we are told that it must take place under essentially the same regulations as SEC, so therefore we are pretty much hands-tied on the form this disclosure takes, and last, it is voted on by the depositors.

We could debate the depositor/creditor/owner situation, that is probably more appropriate for legislation and the courts. However, you can ask any thrift manager in this room today if their depositors/owners would give up that ownership for a few basis points on a deposit and move their deposit across the street or a lower loan rate.

Forest City, we believe it tracks the points we have talked about our Forest City transaction. It was negotiated at arm's length, I can tell you, I was there. The depositors were thought of as evidenced by the bonus interest payment, a discount on the stock offerings, as well as the community and employees were represented.

In summary, we believe these transactions are not necessarily as they are presented in the heat of emotion. We think it is very important that you look at these logically and under the circumstances that exist today.

The system is working, the consolidation is occurring which is a natural occurrence, it is occurring with the stock-owned financial industry.

We think the market is also working. Our bank, for example, reported in a discussion with the *Charlotte Business Journal* that we felt the ante had gotten a little high and we were backing off. Another bank represented here today was quoted as saying the same thing.

I believe if you presented some of the transactions that had been approved to the State administrator today they probably would not be approved. I do not believe that turning this regulatory scheme over to the OTS is a solution. Many of the issues that have been discussed today, which I will not attempt to judge as right or wrong, exist under the OTS scheme, because we have been there and we know.

And second, we just do not think that while the free market is at work Federal legislation in something that is governed by State statute currently is the solution to all the ills in this country.

Thank you very much.

[The prepared statement of Mr. Sewell can be found in the appendix.]

Chairman NEAL. Thank you, sir, very much.

Mr. Roessler.

STATEMENT OF ERNEST C. ROESSLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CENTRAL CAROLINA BANK & TRUST CO.

Mr. ROESSLER. Thank you very much. My name is Ernie Roessler, and I appreciate the opportunity to give our views on H.R. 3615, the Mutual Bank Conversion Act.

If I read our submitted text, I fear I shall only prove that this room sleeps rather than seats 150 people. [Laughter.]

I would still like to concentrate on clearing up any misunderstanding that has led to, I think, this ill-advised and unnecessary proposal.

My remarks are really directed to contrast and process, and I am really glad that Congressman Watt wants to concentrate on that.

I shall contrast how the six constituencies under the current State regulations fare compared to an Office of Thrift Supervision transaction, a straight stand-alone conversion, and to do nothing, and in all this we assume that all institutions are healthy.

The six constituencies are the depositors, the directors, management, employees, the community, and the acquirer, in this case midtier banks. How these groups interrelate is just as important as how each fares as an independent agent. And if we could start with the depositors, and we can address the ownership-depositor issue as much as you all like later, but that has been pretty well bludgeoned to death I think this morning.

But in the case of the State savings bank transaction all depositors in the recent transactions benefit from this bonus rate, whether it is 1 percent, 2 percent, but in each transaction it involves millions of dollars. Under the OTS a straight stand-alone conversion and the do-nothing they receive nothing—they receive nothing.

They also have the right, whether depositors or owners—let us not cloud that issue—they have the right to purchase the stock in the surviving entity. In the case of the State savings banks transaction they have a right to a 15 percent discount to buy the stock of the acquiring bank. Under the OTS guidelines, as you all know, it is only 5 percent.

Under a do-nothing, of course, there is no transaction involved. Under a straight stand-alone stock transaction they have the right to buy the stock of the existing thrift.

Now, the next step to really consider under the stand-alone transaction that the gentleman mentioned in the previous panel is that the stock, the currency that they end up with is really an illiquid small one- or two-office savings institution, and really—I beg your pardon—but if it looks like a duck and quacks like a duck and walks like a duck it must be a duck, and while there has been a change in form there is not a change in substance. There still is a question of a very narrow product range, of a long-term mortgage supported by a short-term CD, which presents interest rate risks which are inordinate. This "stand-alone" must exist over at least a 3-year period until they can flip it into a bank sale. Furthermore, there are really no resources available to become a diversified financial institution, either on the management side or the capital side.

But let us go back to the State savings bank transaction. The currency there hopefully among the midtier banks at least is a widely traded, strong-performing institution. Our stock for instance has had a compound growth rate over the prior 10-year period of over 24 percent a year, and we hope that that is a handsome return to the shareholders. I think our other colleagues also had a very good performance.

But then what happens with this acquiring bank? Where do the retained earnings go under a State savings bank transaction? Well, I submit that it goes to five constituencies: First, it goes to the de-

positors because they get the bonus rate; second, there is the 15 percent discount on the stock. Although somebody thinks that is for nothing, the acquiror does have to issue more shares to make that up, so there is a definite cost to that; third, the community benefits. Now, maybe some people today are not interested in the community. We want to put our best foot forward in the community in which we operate, and to put forward $1 million into the community in the latest transaction I think is a sizable amount; the next constituency is the management. There is no question, that they are better off under a State savings bank transaction, OTS, or to do nothing certainly, but who are we, or who are you to regulate to say what is right? Should we regulate NFL salaries or whatever? I do not think so. If they spent 30 years there, they are the ones that put the blood, sweat, and toil into it, and they put their risk on the line, and most of them—I think my colleagues will bear me out—stay at the ongoing institution, in fact they run the institution.

The directors benefit, that is true, but also we forgot the employees. The employees benefit more under a State savings bank transaction, Congressmen, than they would under an OTS, a straight stock deal or do-nothing.

I really try to point out that all benefit more under the SSB alternative than under the other alternatives.

I would like to come back to the depositors and the ownership issue in the sense of how many really participate—no one asked the question, and no one obviously answered the question—only 2 percent of the depositors step up and buy stock in an SSB deal. On a straight conversion where they have to assume risk, and be at risk for 3 years under a high interest rate gap scenario, again not any more than 2 percent step up. Well, then, who is stepping up?

I submit to you a high percentage of the dollar investment in the stock comes from out-of-State, out-of-community people. One of our transactions—you probably do not want any names—but if there are 6,521 members, whether owners or depositors, bear with me, only 23 of them, all from out of State—and I do not know if they are from Washington or New Jersey or Philadelphia—bought over 70 percent of the stock. You know how much they had in total deposits to represent that? They had $10,618 out of $91 million in deposits.

Now, I think things are rather distorted, so if you are worried about the 98 percent of people who elect not to participate, I think you can rest assured they are OK, and the few who definitely profited should not be your concern either, unless some of those were represented on the panel. I cannot really speak to that.

The other issue I would really like to address is what Congressman Watt said on process, because I think it is very important, and I think it is important to distinguish what majority means here. When we do one of these State savings bank or OTS, for that matter, transactions, it is all the depositors that are counted, whether they vote or do not vote. If they do not vote, it is counted as a no vote, and it takes more than 50 percent to carry the deal.

I really do not know the statistics on your elections, but let us look at the recent Presidential election. If 43 percent went for the incumbent in the White House and we had to count all eligible vot-

ers in America, even those who did not vote, he would have far less than 25 percent of the vote. That deal would not have floated in a State savings bank transaction.

Now, the State administrator—I never met Mr. Jacobsen, but I would like to recognize what he and his colleagues said, that the free enterprise system works. All constituencies truly benefit, and his office acts as a facilitator overseeing the dividing of the pie, not the size of the pie, and the size of the pie is determined by the marketplace, not artificially socialized control.

And what is that size, and how is it determined? At a certain point the acquirer will not spend more either because of dilution to the shareholders, or because there is just not enough left over to convert the existing acquired thrift into a viable diversified financial institution. That is what sets the limit, that is what the marketplace is about, or the existing management or directors will not put their institution at risk because the risk-reward ratio is out of balance, they do not see the reward. The same as holding stock for 3 years.

Sure, if you socialize or even regulate State savings banks some deals will still be done, but as demonstrated earlier the overall and best benefit for all constituents will not be realized, only the benefit will go to that narrow band of disgruntled or aggrieved people of the 2 percent I referred to.

Now, I would like to mention also that what is being proposed in the process, too, is something more than States' rights, it is more than threatening the dual banking system of State and Federal banks, and it is more than eliminating any role of State regulators, although we are concerned about that.

What you are doing is failing to recognize two important elements, and perhaps your staff would like to listen as well. Number one, what already regulates and governs us must be recognized. The Governors of the Federal Reserve Board approve any acquisition by a bank holding company.

The North Carolina banking commissioner, who is here this morning, and the FDIC approve any merger of an acquiring thrift into a subsidiary bank, and the Office of the Comptroller of the Currency approves a merger involving a national bank.

I contend to you that we have enough Federal oversight in this process. To now apply OTS regulators on an issue where there is no safety and soundness problems whatsoever as my colleagues said, is simply high-handed Federal involvement.

I think the second element that is also important is the consolidation of the thrift industry, and this is an event which is becoming inevitable. It is in the best interest of the overall financial community.

To eliminate the possibility of State savings banks converting and merging at the same time is to simply limit the options of healthy thrifts, and I hate to say it, but if we inhibit the consolidation of the thrift industry today, then more than likely there will be more unhealthy thrift institutions tomorrow. Why? Well, surely there will be another updraft of interest rates in the future. No matter how we regulate the marketplace, that will happen.

And then I am afraid our legislators will undoubtedly be immortalized as the founding fathers of RTC II, to whom all taxpayers in this room and across the Nation will be forever in your debt.

I would like to close on what Sir Winston Churchill said about free enterprise, if we can quote Mr. Irvin as well, "Some regard private enterprise as if we were a predatory tiger to be shot, others look upon it as a cow that they milk. Only a handful see it for what it really is, a strong horse that pulls the whole cart."

Thank you very much.

[The prepared statement of Mr. Roessler can be found in the appendix.]

Chairman NEAL. Thank you, Mr. Roessler.

Now I would like to hear from Mr. Allison.

STATEMENT OF JOHN A. ALLISON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BRANCH BANKING & TRUST CO.

Mr. ALLISON. Thank you, Mr. Chairman. We really appreciate the opportunity to be here.

We have been involved in a number of merger conversions with both OTS and State-chartered institutions, and it has been an interesting experience.

Talking about merger-conversions in a short period of time is difficult because it is a very complex process and there are a lot of issues here. I would like to try to make seven basic points.

The first point, and I think a very important one, is that the managers and the directors of these institutions are good guys. They are the people that managed their institutions through the difficult times—these are the institutions that did not fail, that did not cost the taxpayers money—these are heroes, these are the people that are community leaders, and I have talked to hundreds of them, and they are good people. To picture them as bad people is unfair.

Second, it is absolutely clear to me that these managers and these directors believe that what they are doing is in the long-term interest of their institutions. They believe it is the right thing to do, and I believe they are right. What they are saying is that they cannot compete long-term in the current environment, they cannot afford to invest in new products and services, they cannot afford to invest in the technology, they cannot afford to invest in employee training programs that are necessary to compete.

The financial services industry is globally competitive, changing very rapidly. The thrift industry is losing market share in droves to banks and nonbank competitors. It is a dying industry, and they see that. What they are interested in is creating a bright future for all their constituents.

I do not believe that a single one of the thrifts we have merged with was driven by self-interest. Certainly, they like the economic rewards, but I believe that they gut-level said "This is the right thing to do." Most of these directors have been on these boards 20 and 30 years, and had the opportunity to do these transactions 20 years ago. This is not a new phenomenon. They chose not to do it because they thought they had a future, and now they do not think they have a future.

The third issue, and an important issue that has been hit on a lot is about the issue of depositor rights. That is a difficult and complex issue. The court system has been looking at that for 50 years in a series of transactions, and what the court system has said, and I think they are right, is that yes, the depositors are owners, but only in a limited and special sense, and the reason they are not full owners is because they are not at risk, and ownership normally requires risk. They have not put up any capital like shareholders, and if the institution fails the Federal Deposit Insurance system, the taxpayers eat the losses. These depositors are not at risk, therefore they are not owners in the normal economic sense.

I will just give you an example of that, and think about this from a personal perspective. Twenty years ago let us say there was a thrift on one corner that is a stock-owned institution, and a thrift on another corner that is a mutual institution. You go to the stock-owned institution that happens to be on the left side of the street because you like the color and the sign; somebody else goes to the mutual institution. Probably neither one of you knows whether they are stock or mutuals. Twenty years later suddenly why do the depositors in this mutual thrift who have done nothing different than you did as a depositor of the stock institution, why do they get a windfall? A great question, and that is what the court says, "Why do these people deserve a windfall?" and the court is right.

The real people, the real owners of the mutual institutions in my opinion are the taxpayers, because what happened when the mutuals failed, and they failed in droves across the country, are the taxpayers, and the most important constituent that has not been addressed at all is what does all this mean from a taxpayer perspective?

Another interesting question is while people are certainly lined up ready to share the benefits of these healthy mergers, I did not see many depositors lined up to take care of the taxpayer losses when those mutual thrifts were failing. So the taxpayer is a very important and underdiscussed constituent that I want to deal with in a minute.

We have something that is unclear as to the ownership, who really owns the mutual institution. We believe that the only solution—it is not an optimal solution, it is the best solution, not the right solution—is to look at the series of constituencies, and we believe there are six constituencies in a mutual thrift institution.

There are certainly the depositors, there is also the general community, there is the employees of the institution, there is the management of the institution, there is the board, and there is the taxpayers. Those are the six constituencies, they have varying interests and varying contributions.

I firmly believe the people that have unequivocally, unquestionably made the biggest contribution are the management and the board. What is the difference between these healthy thrifts and the failed thrifts? Was it the depositors? Were the depositors in the failed thrifts worse than the depositors in the good thrifts? I say no, I think most times they are the same depositors. The depositors did not determine the success of these institutions through this very difficult crisis. The people that made the difference were the

decisions made by the management and directors, and from a taxpayer perspective those people are heroes because they saved the taxpayers billions of more dollars that could have been lost if they were not the high quality good decisionmakers they are, so clearly from an objective perspective those people deserve benefits.

What we have tried to do in our proposals on the State bank proposals is do the best we can to distribute the benefits to the six constituencies, and let me give you approximate percentages on an historical basis—and I am going to tell you why that is a poor way to look at it, but that is the way it has been looked at a lot—of who gets what in a merger conversion process under the State proposal.

Approximately, 30 percent of the benefits go to the depositors, approximately 10 percent of the benefits go to the community; approximately 10 percent of the benefits go to the nonmanagement employees, approximately 20 percent of the benefits go to the management employees, approximately 20 percent of the benefits go to the board, and approximately 10 percent of the benefits go to the taxpayers.

Is that perfectly right? Who knows. Is it reasonable and rational and reasonably fair? Absolutely.

The next point, point number 5: This view is in a way, however, misleading because the benefits are not a distribution of existing assets. There is no liquidation of the thrift, it does not go away, we do not put the money in a truck and take to our home office. It does not work that way. The institution goes forward. The benefits that go to the employees and management and directors are largely benefits for future actions, they are stock awards, they are stock options. If we do not create value in the future, those awards will not be worth anything, or will not be worth material amounts. So while there is embedded some historical perspective, a lot of the benefits are about future actions of these people, future contributions that they are going to make—the same kind of benefits that we offer in stock-type transactions.

The last two, and I think the two most important points: First, there seems to be a lot of confusion about the OTS versus the State charter in terms of who wins and who loses, and I would contend that probably a lot of people have it backward. We have done a lot of both transactions and understand them very clearly.

First, the winners in the OTS—who is better off in the OTS transaction versus the State-chartered deal? Two big groups that are better off: Number one is the acquirers. In the OTS transaction BB&T gets more, that is a mathematical fact. The other big winner is high-net-worth individuals who leverage these transactions, they represent less than 10 percent of the depositor base, usually about 3 or 4 percent of the depositor base, many of them are out of State people, and many are institutional investors that put $100 investments in all these thrifts all over the country. They are the big winners in the OTS transactions.

Who are the losers? Who is worse off because of the OTS proposal versus the State proposal? Two groups are clearly worse off. One is the average mom and pop working man depositor. The average mom and pop, average working man depositor does not participate in the stock transactions in terms of a leveraged deal, they are not willing to do that, but under the State deals they get a deposit

bonus that they would not get, and every one of them gets something. So the average mom and pop depositor is a big winner in State transactions. I think that was reflected in our recent vote on the State transaction we consummated in Mooresville a few weeks ago where 80 percent of the depositors voted for the transaction, and only 5 percent against it, and I think those people said "We are better off, this transaction is good for us." I believe those people are intelligent people, I believe those people certainly did not understand all the issues, but they are intelligent enough to make that decision. They are certainly as intelligent as the people that voted against it. I think it is interesting that 80 percent voted for it, and only 5 percent voted against it, and I would say it is also interesting that the 80 percent that voted for it did not get to have their forum today, but the 5 percent were well represented. But the average depositor—the average depositor is better off in the State-chartered transaction.

The other winner is the nonmanagement employees. The benefit package going to the nonmanagement employees is better in the State-chartered deals than it is in the OTS deals. They get a better retirement package, and they get a better ESOP program. I have had many meetings with nonmanagement employees when we tell them how good their retirement package is, and in the typical cases of long-term clerical employees who had been there 25 or 30 years making $25,000, 5 years away or 3 years away from retirement, they will come up and cry and hug you and kiss you because they are big winners in these transactions. So I think people have got it backward in terms of which is better for who in terms of the OTS versus the State.

Finally, I think the most important point—and I will say this independent of being CEO of BB&T, I will say this as a taxpayer—I think one of the most important constituencies in this is the taxpayer. The taxpayer wins in this process in two ways. First, when BB&T does a merger conversion, we merge those thrift institutions into our bank. In that process we recapture what is called the bad debt reserve, which was a tax benefit that Congress gave the thrift industry. We have accrued $33.1 million in tax liabilities from those transactions. That is $33.1 million more in taxes that we will pay that we would not have paid if those transactions had not happened, and $33.1 million in taxes that somebody else will not have to pay. So the taxpayer is a big winner directly.

The taxpayer is also a big winner indirectly, indirectly in the sense that these transactions reduce the risk of future thrift failures. They raise capital, they consolidate the thrift industry into the banking industry which reduces risk. I think as a taxpayer that is a pretty important consideration. We do not think there is ever going to be another thrift crisis, but it is possible, and the taxpayers' risk is significantly reduced by these transactions. I think it would not be good public policy to make it more difficult for these transactions to take place, given that the taxpayer just took huge losses, and is the primary constituency I believe of this whole process.

So seven basic points: The managers and directors of these institutions are good people, they are honest people. Second, their motivation is to do what is right——

Chairman NEAL. Excuse me, Mr. Allison. Mr. Allison, thank you very much.

Mr. ALLISON. OK.

Chairman NEAL. I think we have made note of all of them, and if you do not mind, let us move on so that we will have a little more time to discuss this as we go on.

Mr. ALLISON. Sure

Chairman NEAL. Thank you, sir, very much for your testimony. Ms. Newton.

STATEMENT OF JUANITA NEWTON, CITY EXECUTIVE, CENTURA BANKS, INC.; FORMER VICE PRESIDENT OF FIRST SAVINGS BANK, FOREST CITY, NC

Ms. NEWTON. Thank you. My name is Juanita Newton. I live and work in Forest City, North Carolina.

In 1962 I was hired by First Federal Savings and Loan of Forest City as a teller. Today, that thrift institution is part of Centura Banks. I now work for Centura as a senior vice president.

The change that I have seen since the merger with Centura has been very positive. I would like to tell you why. For 31 years I worked for a traditional savings and loan association. During most of those 31 years there were essentially two types of financial institutions; we had the traditional savings and loan, and we had the commercial bank. The savings and loans offered home loans and deposit accounts; the commercial banks offered checking accounts, car loans, commercial loans, and many other services. Each type of financial institution fulfilled a need and had its own protected place in the market.

Then the Federal Government began a deregulation process which caused the commercial banks to become very aggressive. The commercial banks went after the customers who had traditionally maintained their deposits with us, and they also went after our loan customers as well. Deregulation put us in a totally different environment.

Immediately before our merger with Centura, First Savings Bank was a State-chartered mutual savings bank. We had converted from a federally chartered savings and loan to a State-chartered savings bank in September 1992. We believed that doing business as a savings bank rather than a savings and loan would be beneficial because of the negative publicity that went along with being a savings and loan.

After we converted to our State charter, we began to take a hard look at our future. We were a well-capitalized institution in a small market. Essentially, our market was limited to Rutherford County, North Carolina. We had only one office and eight employees. Even though we were in a small market, that market was also served by commercial banks and a number of other companies with mortgages and other financial services to sell.

Before the merger, First Savings was able to offer mortgage loans and deposit accounts, nothing else. The competition for home loans and deposit accounts was growing, and we knew it. We also knew that a lot of our customers were older. Many potential new customers, especially the younger ones, were attracted to those institutions who could offer lots of other services, such as car loans,

credit cards, ATM cards, and things of that sort. With only eight employees, we did not have the people and we did not have the technology needed to diversify our operation and to provide those things.

We also realized that if we tried to diversify into those other products and services we might lose a great deal of money, or even fail completely. We knew that many thrift institutions who tried to diversify in the eighties had fallen flat on their faces, or ended up in the hands of the Resolution Trust Corporation, and we did not want that.

It was clear that we had to change to meet the competition, and it was clear we did not have the resources to do it on our own, so we began to look at the possibility of combining First Savings Bank with a larger institution. Several banks did express an interest in us. We did not rush into a decision; we first sought the advice of financial advisors and outside legal counsel to help us consider our choices. With their help, we began to talk to larger banks. We were determined to see that any changes we made would bring real benefits to our members, our employees, and our community.

Centura eventually made a proposal which satisfied all these requirements.

We knew that any proposal we endorsed would require the approval of our members, and we were determined not to give them anything less than the best. We signed our agreement with Centura in March 1993. Then we worked real hard to comply with all the regulatory requirements, and our members received proxy materials which set out in detail all the benefits of the transaction.

The benefits for members included expanded financial services, the opportunity to purchase Centura stock at a discount, and a 1 percent special payment to holders of deposit accounts who did not buy stock. Incidentally, I believe we were the first institution in the State to propose payment of that deposit premium.

We also proposed the establishment of a substantial community foundation with funding of $1½ million. At the time it was set up, our foundation was the largest one established in North Carolina in connection with a merger conversion. That foundation just last week made its first grants to a number of community organizations. The response to that has been overwhelming.

It is true that our directors received benefits from the transaction. Those benefits were well earned. We had seven directors at the time of merger. Each one of those directors had worked very hard for us. Every week two of the directors came in to help appraise property for us. They took a day each week away from their own jobs to inspect real estate for our mortgage loans. Four of those seven directors also worked as officers of the savings bank. They kept themselves personally aware of all matters affecting the institution including the many regulatory requirements and changes. We called on them frequently for advice and decisions concerning the loans we were considering, the purchase or sale of securities, and countless other matters. We literally would not change mortgage loan rates without consulting them.

This was, in short, an unusually active and productive board of directors, and despite their high degree of responsibility and involvement they served without the protection of D&O liability in-

surance. Since the merger, they have continued to serve Centura as an advisory board. They have agreed to help make the merger a success by remaining active in the community in a number of ways. Therefore, as I said, the benefits they will receive from the transaction were well earned.

All the benefits were described in the proxy materials that our members received. We scheduled a special meeting in September 1993 for our members to vote on the conversion and the merger with Centura. I am proud to say that over 75 percent of our members voted in favor of the transaction. I am also proud to say that since that time the merger has been a great success.

I can personally testify two ways in which the merger has been successful. First, we can offer more services to our customers. Just a few months before the merger, I made a home loan to a customer who was very dissatisfied with his own bank. When he had approached them about refinancing to lower his interest rate, he was not received very well, he did not feel like the bank had any interest in him. So we approved his loan and made it, and at that time he asked if he could open a checking account. Unfortunately, that was not a service that we could offer him at the time. After the merger, however, he immediately came back, one of the first customers to open that checking account. And another customer has written a letter to me recently, which you have a copy of, expressing his satisfaction with the merger and the fact that his needs had never been met as a borrower when we were a savings and loan or a savings bank.

As an employee, I can tell you about other benefits brought about by the merger. First Savings was a small institution, just one office, only eight employees. In a small place like that, opportunities for advancement are few. Most of our employees thought "Once a teller, always a teller." We just could not offer many chances for advancement. One of the first things we were able to do after the merger was to transfer an employee of 25 years from a teller position to that of an administrative assistant/loan processor. She has always been a very capable person deserving of advancement, but the opportunity just was not there. Now that employee is enjoying new responsibilities and increased opportunities for the future, and that experience is not unique. There is another employee that is very excited about new opportunities that has been with us for over 20 years, and there is a new employee that is very excited that now she is going to have some equal opportunities to move up within the Centura organization.

There is no way that First Savings as a small institution could have matched the career advancement and training opportunities that Centura bank has brought to us. I hope, therefore, that as you listen to testimony from others in this matter you will not forget what the opportunity for merger has meant to the employees of small institutions like First Savings. Our members are benefiting from the expanded services we now provide, and our employees are benefiting from their increased opportunities for training and advancement. In these and other respects, our merger has been a success. If we had waited and done nothing, the future might have been quite different.

When interest rates rise again, the demand for home loans will fall. Small thrift institutions will have difficulty maintaining profitability in those circumstances. How will they survive? The thrift industry must look hard at its future, and each institution must do what is best for it.

In our case, I believe First Saving has done the best thing for its members, its employees and its community.

Thank you.

[The prepared statement of Ms. Newton can be found in the appendix.]

Chairman NEAL. Thank you, ma'am, very much.

Our last witness is Mr. Carl "Buck" Hill, president and chief executive officer of Home Savings Bank of Albemarle. Mr. Hill.

STATEMENT OF CARL "BUCK" HILL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HOME SAVINGS BANK, ALBEMARLE, NC

Mr. HILL. Thank you. My name is Carl Hill, and I have worked for Home Savings Bank for 37 years, I have worked hard, and I am proud of what we have accomplished.

I started with the bank in May 1957. Sixteen years later in February 1973 I became president and managing officer of Home Savings. I have been in that position ever since. During my 37 years at Home Savings I have made many friends in the industry, and I have seen many changes. I have seen the good and the bad economic times for our institution. During the late seventies and early eighties I saw many of my friends forced to make hard decisions pertaining to the future of their institutions; some of these institutions failed. We do not want that to happen to us.

Not everyone understands the position we are in today. Home Savings is a small institution in a small community. We have built a fine, strong institution which has done a good job financing homes for Stanley County people. That is no longer enough. The truth is that in the communities like ours these mutual institutions are losing customer base to the larger institutions which can offer so many more services.

We have been very successful as a mutual savings institution, but we cannot ignore the effects of the increase in competition. For us to be successful in the community today we must make changes. We cannot stand still, we cannot run the clock back, we cannot make sure our institution stays strong and continue to do well in Stanley County.

Home Savings board of directors recognized these changes, and then took a look for a year to carefully consider choices and options. We considered all the possibilities, and we did it in a careful and deliberate way. Outside consultants were hired to meet with the board to assist us in our planning for the future. With our consultants we considered staying a mutual institution. We realized that the number of mutual institutions in this country is declining, so we decided we should take a close look at why this is happening. In our community, our customer base is shrinking due to customers going to larger banks which offer so many more services than we offer. Home mortgage loans are our basic service, and we have to send our customers to the larger banks for other services. Trying to start up these additional services ourselves would be difficult

due to our size and lack of experience in these areas. The volume from our community would not be large enough to hire the necessary expertise. I have seen friends of mine attempt this and fail, either from the lack of volume or lack of knowledge.

There are other problems facing small institutions. Technology is a difficult thing for the smaller institutions. We are in a fast-moving computer age. Home Savings, with a staff of 37 people, cannot send its employees to schools for training to keep up with these fast changes. Other problems are the cost of the modern equipment, and being able to utilize it to its fullest capacity. Small institutions cannot do it, plain and simple.

There is also the burden of regulatory changes, which are becoming more and more difficult and expensive to interpret and to implement, especially with the size of our staff. The paperwork in our institution continues to increase every year. We know that a lot of the effort that this takes now could be reduced and made better after a merger.

We considered a stock conversion without an acquirer, the so-called "stand alone" conversion. For many reasons, we decided not to. A stock conversion would not bring additional services to our community, would not help the problems that we face with the technology, and would not offer assistance with meeting regulatory requirements and changes. In fact, being a stock institution would bring us more regulation, not less.

Another important reason for not doing a stand-alone conversion would be the reaction of our community to a stock sale. A few years ago in our county a savings and loan converted to a stock association. It did not last long. The RTC took it over, and the local people who had purchased stock lost their money. I can give another example. About 10 years ago, a State bank was organized. Today there is very little market for the stock, and the price has stayed about the same. For these reasons, we feel that very few of our customers would buy our stock and the community would receive very little benefit from our stock sale. Most of the stock, if the sale was successful, would be sold to the outside traders, such as people from New York, New Jersey, and Colorado who have tried to open accounts in recent years. With all due respect, our purpose is not to serve those outside stock speculators.

Congressman, I have much more in my comments that I would like to give to you, but in respect to your request for time I would like for you to continue to read it at your convenience, and I would like for you to find the theme throughout the rest of my comments that our directors and management has kept in mind our employees, our institution, our community, and our depositors. I think you will find that theme throughout my comments.

Thank you.

[The prepared statement of Mr. Carl Hill can be found in the appendix.]

Chairman NEAL. Thank you, sir, very much.

Thank all of you. I know you are all very fine managers and operators of your institutions, and I appreciate very much your being with us, and I appreciate your opinions.

You know, I would like to say briefly again what got us into this. I guess maybe we are overly sensitive to the health of this industry

because of recent experience and its horrible cost to our country's taxpayers. I guess at the point we became interested there were already a number of protests against some of these transactions on the part of depositors, rightly or wrongly, and this is the sort of thing that brought it to our attention. This article in *North Carolina Business* magazine pointing out the huge benefits paid to directors, and how that differed from the deals that were offered to the depositors, and then brought to our attention that North Carolina law—I am not saying that we have anything to do with it, it is not law that we made or have any responsibility in seeing is enforced, but just of interest—seems so clear about the ownership of these institutions, whether it makes any sense or not—the law on its face is quite clear. I understand it may have been interpreted by the courts to mean something other than it appears on its face, but certainly on its face it appears fairly clear. And also the responsibilities of officers and directors under North Carolina law are quite clear, and they are clear in that they show a responsibility to the depositors of these institutions.

So, anyway, as I say, we are interested in fairness. Often the questions that end up before the State legislature, the national legislature, either one, are questions of equity, and different people have different opinions about these questions, and it ends up our lot to try to work them out. I do not find this entirely clear and, of course, that is why we are having the hearings, and I will say that we are going to continue the hearings in Washington soon, next week I guess it is, and at that time we will hear about what is going on in some other States, and other States have laws that are quite different from North Carolina's, and we will hear also from the Office of Thrift Supervision and the FDIC on these questions.

I think you all have made your cases very clearly. I would point out that someone compared OTS rules with our State rules. We are not here to defend OTS rules, I do not find them all that inspiring.

I am curious, I just have a few questions for this panel. Mr. Allison, I notice in the paper this morning there is an article that says that customers of a mutually owned North Carolina savings and loan that was to be bought by your company, BB&T Financial, have killed the deal, Scotland Savings Bank of Laurenburg declined to join BB&T because of protests by depositors, and so on.

Why is that? What is going on?

Mr. ALLISON. Well, the newspaper article is not really accurate. What happened is that the board made that decision primarily because of the introduction of the legislation that Congress introduced, you introduced last November, which from their perspective created a lot of uncertainty.

What had happened in that case, we had agreed to a certain benefit package. As you know, you have got a grandfather date in the legislation so that they do not know what the benefits package is. Because of that, they cannot get a proxy out to communicate their real position, and because of that there is a lot of commotion, and so they said "We cannot tell the world, because the SEC will not let us talk about the benefits, because we do not know what they are, because we do not know what this grandfather does to us."

The number of depositors that were opposed to the transaction was about 30 out of several thousands, probably less than 5 percent, similar, I think, to what we are seeing today, and, as I said, in past transactions we are getting about 80 percent for and 5 percent against. But it was the uncertainty created by the grandfather in the legislation.

I think it was honestly pretty sad. I talked to a lot of long-term employees, nonmanagement employees, mostly female, mostly in their sixties, mostly had been with the institution 30 or 40 years that were going to get some very nice improved retirement plans, and a lot of them were crying, and I think sometimes we miss the negative impact on the employees of some of this kind of commotion.

Chairman NEAL. By the way, I do not disagree with any of that, any of the points you were making, many of them sound quite sensible to me—and someone else made the point about the strength of the North Carolina system, because we do not have unit banking laws—Mr. Sewell, I believe it was you making this point. I quite agree with you, I hope that we pass interstate banking legislation that will allow the system to operate more efficiently. We are going to try to do that this year.

It just seems to me in this case what we—you know, if they were talking about Wachovia Bank here, there would not be these questions. The depositors at Wachovia Bank do not have any ownership interest, or in any other bank. This is all because the North Carolina law has said the depositors are owners. Right?

Mr. SEWELL. Right.

Chairman NEAL. I mean whether you agree with that interpretation or not, that is what the law has said, and it has also gone further and said that there are these fiduciary responsibilities that officers and directors have to those people, and I guess all of this hue and cry—in fact, as this article regarding this Scotland Savings Bank closes, it says the following: "Deals like it have been attacked by depositors in recent months. Most of the protest has focused on the issue of the benefits the acquiring banks give to S&L officers and directors." That seems to be what it boils down to, does it not?

Mr. ALLISON. It is interesting, though, when you get the votes the depositors do vote for the transactions. We just had one which was 80 percent for, and 5 percent against, and without any general proxies, with full disclosure, intelligent people, and they believed it was to their best interest and their institution's interest.

VOICE. Who was that 5 percent?

Mr. SEWELL. Mr. Chairman, if I could add something to your comment.

Chairman NEAL. Yes, Mr. Sewell.

Mr. SEWELL. I would be most happy personally and for our institution if this whole issue were to be judged on precisely what you just articulated, as opposed to an emotional response by what may be 5, may be 50, may be 80 percent. Let us view it in the context of what it really is. This is—we have a very odd animal here in a mutual depository institution, and I think what we are really struggling with is what are we going to do with it.

I believe, for one, that the market has moved beyond its useful life, and the market is doing the best it can under free market

forces to absorb those, and I think given time the market does always compensate. As I said earlier, we feel that it has probably gotten a little out of kilter, and we have backed off, but it just—really I implore you as a citizen of North Carolina and a taxpayer to not have a knee-jerk reaction to this and pass Federal legislation that makes us worse than we were prior to such legislation, and if abuses are taking place in States other than North Carolina then maybe that should be addressed in some other way other than legislation that affects us.

Thank you.

Chairman NEAL. Well, you know, we are trying to hold a fair set of hearings without knee-jerk reactions of any kind. Do you question that? Do you think the hearings are not fair?

Mr. SEWELL. No, I just said I implored you to. That was not intended to indicate you were not.

Chairman NEAL. OK. That is what we are trying to do, we are trying to understand the issue, and it just seems to me that it really does boil down to this question of these perceptions of what is fair or not. I mean the OTS, under the OTS situation they have gone out of their way not to allow these big benefit packages, because—I assume now, I do not know this, I do not know what the logic was—but it seems clear to me that it was probably because they did not want there to be either in actuality or the appearance of conflict of interest that the directors were doing something because they were getting paid as opposed to doing something in the best interest of their depositors and the institutions. That is really the basic issue here, and no one is criticizing—maybe that is not correct—I certainly have not—this mutual form of ownership, I must agree with you, Mr. Sewell, it doesn't seem to make a lot of sense in today's environment, and in fact a number of institutions over the last several years, not just recently, have converted from mutual to stock, and it has probably been in the interest of most people. It comes back to this issue of big payments to directors that are called into question.

Mr. ROESSLER. Congressman, if that is what it is, we can sit here all day and say "Well, 30 years is worth this, these are good people," and they are, but who is paying them? That is what I was trying—and I know I had limited time to make my comments, but it is clear in my mind, and if it is not in yours we have got to share why it is not clear. The acquiring institution is paying those bonuses and—or salaries or whatever, deferred compensation—above and beyond what is allowed under the Office of Thrift Supervision today, not the depositors. The depositors are not paying a penny—or members, excuse me—let us call them what they really are, under the legislation they are called members—the members are not paying a dime of those management incremental bonuses, salaries, and so forth.

Chairman NEAL. It is the same thing. Their claim is that they are not benefiting fully along with management.

Mr. ROESSLER. Well, but I thought I made in my comments, and my colleagues did as well, that they are benefiting, the members are benefiting more under this State savings bank arrangement than any of the other three possible arrangements I mentioned.

Chairman NEAL. They do not see it that way.

Mr. ROESSLER. Yes, but it is in black and white, is it not? I mean did we not just talk about what the members get? They do not get the bonus rates under the other three types, whether it is a no-deal like in Shelby, they are not getting anything now—or like in a straight stock conversion they do not get a bonus rate, under an Office of Thrift Supervision they certainly do not get a bonus rate, and under a State savings bank they do, so I am sorry, is that not fairly clear?

Chairman NEAL. Well, maybe they wanted some other arrangement.

Mr. ROESSLER. But they do not get it under the other, under the Office of Thrift Supervision they——

Chairman NEAL. Maybe they want more, I do not know.

Mr. ROESSLER. Oh, well, that is fine, but they can do that through any process. They can vote no, they can make discoveries.

I think the system has already worked a little bit, has it not? I mean, the fact that as these deals mature and the transactions mature, and one is one, and another, and another, I think more and more is getting divided. The pie as Mr. Allison described, or as Mr. Sewell described, from our end as I said we are approaching the end of the road, too. I mean I do not even think you have to do all that worry about legislation, I do not think we will do any more of these deals. I mean, the pie has gotten as big as it is going to get. We are not going to give any more away, whether it is greed or whatever they want.

As Mr. Allison pointed out, walking down the street, I will bet you 99 out of 100, maybe 100 out of 100 would not know the difference except the signage difference of whether it is a mutual or a stock-held deal. They only know about it once they can get their hands in somebody's pocket, and, thank goodness, that is only a couple percent. The other people that vote for it, the 80 percent say "OK, I have got a good deal, I got a better deal than I had yesterday," but you are right, greed as an emotion is very difficult to deal with, but, gosh, do not legislate that and protect it, please.

Thank you.

Chairman NEAL. Mel.

Mr. WATT. Thank you, Mr. Chairman, and since this may be my last time around I want to express my thanks to you again for conducting these hearings and try to get us back to what I believe to be the process issue.

I am not sure that in most cases I perceive that this panel was really talking about that, and it seems to me that certainly my response to Mr. Sewell was that this hearing is not about whether we like or think that consolidation is desirable or not, I think if we get off on that issue that is a whole different keg of nails as my mamma used to say.

Mr. Roessler, it is certainly not about the dividing line between what is socialized and what is regulation. I mean, we walk that line every day, and for you to characterize what we are doing here as moving toward Socialism, I think you inflamed the issue more than you edified it.

And it is not about whether we support private enterprise. I think there is probably not anybody in this room who does not support private enterprise.

And, Mr. Allison, it is not about whether we think the folks who have been managing S&Ls are good guys or bad guys, I think I probably agree with you that by and large all folks who operate these institutions are trying to be good, and are good guys.

And, Ms. Newton and Mr. Hill, it is probably not about whether you got a better deal going forward than you had looking backward. I think you are probably right that you do.

So, in the final analysis for me it is still a process issue, and it was enlightening to have Mr. Roessler and Mr. Allison at least define for me who they perceived the constituencies to be, because that raised the question for me, number one, are those the right constituencies, and you identified six of them, and both of you identified the same ones, so I want——

Mr. ROESSLER. I missed a big one, the taxpayers. He missed a big one, the acquiring banks, so we all got seven, I think.

Mr. WATT. Well, I think when he talked about taxpayers and you talked about community, I assume those two things are interchangeable at some level. Maybe you all were talking about them in different contexts.

The problem that I have is that in this process that has been followed, the merger process, the stock process and conversion process, it seems to me that the people who have the most at stake who are the owners of this institution, I think—the law says that—are the people who do not have anybody in this process when the conversion takes place who are representing their interest directly, and in fact seem to have somebody in the process who has a conflict of interest in representing their interest, so when Mr. Sewell says all of these things were negotiated at arm's length, my immediate question was: "Yes, they were negotiated at arm's length, but who were you negotiating with?" Was the owner of the institution at the table and represented in some fair way in that negotiation? And I just do not see it in the process that is now there.

I see the directors being at the negotiating table and representing their own interest, I see the management being at the table and representing their own interest, I presume that it is the administrator's responsibility to protect the community and the taxpayers' interest. Much to my chagrin this morning I found that at least these administrators did not necessarily view that as their particular interest. I see the acquiring bank there representing its interest, so the only two people who are not technically at the table among those constituencies you have identified are the employees who all agree that "We get a better deal because we are going into a better employment package, employee package," but who is representing the person who the law says owns this institution? Who is at the table who can represent their interest without having a conflict of interest?

And that is the process issue that I still have not heard anybody address, and I welcome your response because I still do not understand who is there representing their interest.

Mr. SEWELL. May I answer that?

Mr. WATT. Yes.

Mr. SEWELL. Specifically, that one question as to who is representing the depositors, as Ms. Newton pointed out our trans-

action in Forest City was we believe the first time a bonus interest payment was offered to depositors.

Mr. WATT. I am talking about who was there in the negotiations for them.

Mr. SEWELL. What I was going to say is I was there. Centura did——[Laughter.]

I am trying to make——[Laughter.]

Mr. WATT. Well, I mean you represent the inquirer, I take it.

Mr. SEWELL. Could I finish, please?

Mr. WATT. Sure. OK. I am sorry.

Mr. SEWELL. Centura did not offer a bonus interest payment to depositors. The board of directors asked as a contingency upon approval that that be included.

Now, I ask you in that case who are they representing? There was nothing in it for them other than as depositors.

A new element was entered into the arena at the request of the board of directors of First Savings Bank of Forest City. I say that is representation.

Mr. WATT. Oh, you think it is the directors, then, who are representing the owners' interest at the table?

Mr. SEWELL. I am relating an experience to you. In retrospect——

Mr. WATT. That is not a process issue, that is a response in your particular case.

Mr. SEWELL. But I am——

Mr. WATT. Who represents their interest on an ongoing basis, and why should not the owners of the institution have a representative at the bargaining table? It seems to me that they have more of a vested interest than anybody else.

Mr. ALLISON. Can I give you the legal answer?

Mr. WATT. Yes.

Mr. ALLISON. This is an old issue, it goes back to the 1940's. There have been a series of court cases, in which we were involved in one fairly recently here in Greensboro a couple of years ago.

What the courts have said is that the members in reality do not have an ordinary ownership position because they are not at risk, not an ownership interest, for example, like shareholders who are at risk, and they are not at risk, and mutual thrifts are even different than mutual insurance companies. In a mutual insurance company you can lose some money if they cannot pay your policy. In a mutual thrift you have FDIC insurance.

Because they are not at risk, the only ownership rights are to vote on changes in organization, and the court says the way the depositors are represented unequivocally is in the proxy process. It is a very complex process, it is meticulous, it is reviewed by not only the State, it is reviewed by the SEC. It says the presumption is that democracy is a good thing and these are intelligent people, and it says: "OK, we give them full information, they get to vote," so they represent themselves, and the courts have said that is the right thing to do, and 50 years of rulings have said that, and I happen to believe that is the only answer that the depositors have the right to representation. The only question is being sure they get the right information.

Mr. WATT. Well, I appreciate your being responsive to the question. I guess the next question then becomes should that be the answer, and I think that is what at baseline these hearings are about, should that be the answer, should they have independent representation at that negotiating table, and I would tell you, at least my opinion is if they did have independent representation, if they had independent representation other than their board and their management these deals would have been substantially different than they came out.

Mr. ALLISON. I think that is true, but the question is whether that would be good.

Let me give you the history again. What really started the process, originally when they did these conversions they simply made distributions to depositors of the net worth, just sent them a check.

Well, guess who got excited about that? Everybody that wasn't a depositor. Why in the world did these depositors get this check in the mail, what have they done, and why did I not get one? And there was an uproar. In fact, in the early 1950's an uproar in the country when they started doing this.

And I think if you think about it, the depositors would have gotten more—and the answer is yes, would that have been good is a real difficult question.

For me the people that we really need to be thinking about is the taxpayer, because the taxpayer is really the owner of these institutions in reality, because what happens when the thrifts fail, the taxpayers take the losses, and it is hard for me to make the depositors out as heroes. They are just like me and you. They are great people, but they are just like me and you, and the person that really needs to be protected and we need to be asking about, what does this mean to the taxpayer, because the taxpayer is the one at risk, and is this process making the taxpayer better off, and I think the answer is unequivocally yes.

(A) We pay more taxes, which means somebody else has to pay less, and (B) this process reduces the risk to the thrift industry. It brings in capital and it integrates it with the banking business.

So I think we ought to ask ourselves who is the real constituency, and I really think we ought to think about what does this mean to—if you are going to change anything, I will tell you what I would do, I would look at taxing the transactions. I would say: "Look, let us get the taxpayers some money, let us not worry about these other people, because this is imponderable, but every time one of these conversions takes place let us get some money." We do it, but everybody does not have to——

Chairman NEAL. I am not even sure I would know who to tax in this process.

Mr. WATT. And/or what amount to tax.

Mr. ALLISON. It is easy.

Mr. WATT. You have got all kinds of issues here about who is getting what benefit.

Mr. ALLISON. It is easy. Thrifts have a bad debt reserve that was a tax shelter. You recapture that shelter when—if they want to do a conversion, they want to do a merger conversion, just make it mandatory that that tax shelter get recaptured.

We do that anyway because we can merge them into the bank, so you define it specifically. The taxpayers win, the transactions are evened out, drive on.

Mr. WATT. Mr. Chairman, I think you and these panels have opened up a tremendously complex issue, and I was debating with the staff here about whether this is a Federal issue or whether it is simply a State issue that the States ought to deal with.

Contrary to the implications that some of you seem to suggest, we are not necessarily down here to try to take over additional turf. The whole issue here is one of fairness, and fairness to people who at least perceive that they have been and are being dealt with unfairly, and so I certainly appreciate your opening up this can of worms, and I hope we can continue to work on it until we get to something that appears to be an equitable solution, and I appreciate again your providing an opportunity for me to participate in this hearing today.

Chairman NEAL. Thank you.

Thank you for joining us, and I would also like to thank Mr. Al Beatty who is the assistant city manager for helping in the arrangements and accommodations for this hearing. Thank you very much, and again thank the mayor and the aldermen for letting us use their rooms.

Chairman NEAL. Would any of you like to make any closing comment?

I think you have done a very good job in spelling out your positions, as I think all of the witnesses have today, and I would like to thank you all for coming.

We will adjourn the subcommittee at this time. Thank you very much.

[At 2:23 p.m. the hearing was adjourned.]

APPENDIX

January 20, 1994

OPENING STATEMENT OF
THE HONORABLE STEPHEN L. NEAL
AT FIELD HEARING ON
MUTUAL TO STOCK CONVERSIONS OF
STATE CHARTERED SAVINGS BANKS
Winston-Salem, North Carolina

Thursday, January 20, 1994

It is a pleasure to hold this hearing of the Financial Institutions Subcommittee here in Winston-Salem. I want to thank Mayor Martha Wood of Winston-Salem and the Board of Aldermen for permitting us to use their council chamber today. I also want to thank my colleague in the House and on the Banking Committee, Congressmen Mel Watt, for joining me here today. This hearing is being held in his district, and I appreciate him taking the time to join me this morning.

Over the past year, the once obscure issue of the conversion of mutual to stock savings banks has begun to attract much attention. Under our Byzantine bank regulatory system, federally and state chartered savings and loans, and federally chartered savings banks are regulated by the Office of Thrift Supervision (OTS), but state chartered savings banks are regulated by the Federal Deposit Insurance Corporation (FDIC). The OTS has comprehensive regulations and long experience in regulating the conversion of mutual to stock form, having overseen over 1100 conversions. The FDIC, on the other hand, does not regulate conversions, and leaves it up to the States to do so.

I note in passing that Treasury Secretary Bentsen has announced that he will shortly be sending to Congress a proposal to consolidate and simplify the confusing, duplicative and overlapping Federal bank regulatory system. While I have some concerns with the details of the proposal, it is clear that we must do something to rationalize and simplify our bank regulatory system. It is a system which no one would have designed from scratch, but has grown ever more tangled over the past 130 years. This Subcommittee will take up the issue early this year, and I hope that we can reform the system, protecting safety and soundness but cutting out unnecessary duplicative regulation which prevents banks from tending to their main job - lending to help consumers and businesses alike.

But back to the immediate subject of our hearing today, conversion to state savings banks is extremely popular, especially in North Carolina. At the beginning of 1992, there were no State savings banks in the state. The legislature had just enacted legislation authorizing them, but none had yet been chartered. There were 61 Federally chartered and 55 state chartered savings and loans in North Carolina. Two years later, the landscape is dramatically different. There are 20 Federal and 7 State chartered savings and loans, but 55 state chartered savings banks. Not one of the 55 is a new institution. Each and every one had a savings and loan charter.

Some of these conversions occurred so that institutions could avoid paying assessments to the OTS and, instead, pay lower assessments to state regulators. The savings can run into

ten of thousands of dollars.

Some may have wanted to avoid being called a savings and loan, preferring to be called a savings bank, although they could have become a federally chartered savings bank long before North Carolina passed legislation, if that were their intent.

But some of the conversions apparently occurred so that management could take advantage of more liberal state regulation of benefits to insiders. Our hearing today will examine the degree to which State regulation of mutual to stock conversions is adequate to prevent insider abuse and protect the rights of the depositors of mutual savings banks.

Opponents of state regulation claim that lenient or lax state regulation allows insiders to profit from the sale of the institution. In so-called merger-conversions, insiders are accused of selling control of a mutual institution they do not own to an acquiring bank to the detriment of the depositors of the mutual.

A merger-conversion is one in which a mutual savings bank converts to stock form and the stock in the savings bank is acquired by another bank. The depositors of the mutual, rather than being given an opportunity to buy the stock of the mutual, are given an opportunity to buy stock in the acquiring bank, usually at a discount from the listed price of the stock. The management of the mutual savings bank often gets pay increases for staying on after the acquisition, and may receive stock or stock options in the acquiring bank. Often, the acquiring bank makes a cash contribution to local charities in the area served by the mutual savings bank that it is purchasing.

But there is the concern that a November 2, 1992 letter to all North Carolina mutual savings banks gave the signal that the State was declaring a hands off policy on merger-conversions. In a letter addressed to "Dear Manager and Board," the Administrator wrote that "[t]his office remains convinced that free market forces should govern transactions such as this and, accordingly, it should not impose its business judgment and/or arbitrarily limit the creativity of the market place. . . .[T]he terms of the transaction should not be subjected to second guessing by this office. . . ." The letter ended with a paragraph praising the institutions that the Savings Institutions Division is supposed to regulate and a cheery "Keep up the good work!!" I would ask unanimous consent that the entire letter by made part of the record.

Mutual savings and loans in North Carolina apparently got the message. By the end of 1993, 46 North Carolina mutual thrifts had converted to state savings bank charters, 30 percent more than in any other state. The question we face is whether there is effective state regulation of state savings banks, or whether Federal regulation is needed to protect the members and owners of state mutual savings banks to the same extent that Federal regulation protects the members and owners of state mutual savings and loans.

Our witnesses today will enable us to hear both sides of the issue as it relates to merger conversions. We will hear from depositors who believe that the directors and managers of

acquired savings banks put their own interests ahead of their fiduciary duties to the depositors. We will also hear from managers of acquired institutions who believe that they maximized the return for depositors and acted in the best interests of the depositors and their communities. And we will hear testimony from the acquirors, who will explain their strategies in making the acquisitions and structuring the incentives for management, depositors and the communities as they do. Finally, the Administrator of the Savings Institutions Division will present his views on the operations of his office in reviewing and approving these transactions.

North Carolina
Savings Institutions Division

James B. Hunt, Jr
Governor

Robert A. Jacobsen
Administrator

Prepared Statement of Robert A. Jacobsen
Administrator of North Carolina Savings Institutions Division
Subcommittee on Financial Institutions
Supervision, Regulation and Deposit Insurance
Hearing, Winston-Salem, North Carolina
January 20, 1994

Representative Neal and Members of the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, my name is Robert A. Jacobsen and I am the Administrator of the Savings Institutions Division of the Department of Commerce of North Carolina. I appreciate the opportunity to appear before you today to provide information for you to consider as you determine the necessity for legislation as proposed by H.R. 3615. Our office charters, regulates and supervises state chartered savings and loan associations and state chartered savings banks.

I also have with me Stephen E. Eubanks, Deputy Administrator, and David C. Worth, Jr., Counsel for the Division, both whom will participate in the question and answer period. They have been working hands-on for an extended period of time in this area and may be more familiar than I with some of the details of the transactions. Steve Eubanks has an investment background and David Worth has been involved in the thrift industry for over 20 years.

Prior to October 1991, the only form of thrift institution regulated by our office was a state chartered savings and loan association. This type of charter is and was granted and governed under the provisions of Chapter 54B of the North Carolina General Statutes. These institutions are also regulated by the Office of Thrift Supervision (OTS) because their depositor accounts were insured under Federal Savings and Loan Insurance Corporation (FSLIC). Following the combination of FSLIC into the Federal Deposit Insurance Corporation (FDIC), all institutions depositors' accounts are insured under that entity. In 1991, our North Carolina Legislature enacted Chapter 54C of the North Carolina General Statutes and it became effective in October of 1991. One of the provisions of Chapter 54C provides that institutions, federal or state chartered, operating in North Carolina may convert from such charter to a charter granted under the provisions of Chapter 54C. Additionally, the statute permits the de nova formation of such institutions. To date our office has received no applications for the de nova formation of a State Savings Bank; however, we have received and processed to consummation 63 applications from institutions

1110 Navaho Drive - Suite 301 • Raleigh, North Carolina 27609
Telephone 919-850-2888 Telefax 919-850-2853

wishing to convert to the state savings bank charter. We presently have 3 applications pending completion and expect those institutions to complete the conversion process prior to the end of January 1994.

Why has this transition from one form of charter to the other occurred? In our view there appear to be several reasons. Many institutions seem to wish to divorce themselves from the adverse connotation which appears in the minds of the public when one mentions a savings and loan association after the turmoil associated with such institutions in the 1980's. Thus a name change is one consideration. Another is the regulatory scheme, costs and fee schedules. A State chartered S&L pays supervisory fees and assessments to our office and to the OTS. Additionally, it is subject to examination by three regulators, namely, our office, the OTS and the FDIC. A state chartered savings bank, on the other hand, pays supervisory and examination fees only to our office. Inasmuch as the FDIC does not charge for an examination, and our annual assessment, based on asset size, is substantially less than the fees imposed by the OTS, the economic factor is certainly a consideration. Additionally, we have entered into an understanding with the FDIC, which currently as we said does not charge for an examination, to share examination reports and perform alternate yearly examinations. Therefore, a savings bank will only be charged for an examination every other year, unless there is some problem which could cause either us or the FDIC to determine that we needed to examine more frequently. Accessibility has been mentioned as a reason for conversion. With our office located in Raleigh, North Carolina, it is easier for management of some of the institutions who wish to meet with us for some reason to reach our offices, even with the great distance in North Carolina from mountains to coast, than it is to schedule a trip to Atlanta, Georgia. Lastly, the SSB charter affords the institution somewhat greater latitude in its asset composition. SSB's are required to satisfy the IRS qualified thrift lender test, which means they must have 60% of their assets in qualifying home loans. OTS regulated institutions at the time Chapter 54C was adopted required a 70% ratio; they have now reduced the requirement to 65%. While we are sure there are probably other reasons which may be mentioned by those who have chosen to convert from one form of charter to the other, these are some reasons that have been shared with me by managers of those who have converted.

It has been alleged that our office is more lenient and more relaxed in enforcing the regulations both state and federal and that is a basic consideration for such conversions. We would submit that this is far from the truth. We have publicly stated and we believe that our actions will support the fact, that no institution applying to convert to the state savings bank charter will be considered if it can not demonstrate that under the rating system used by both the FDIC and the OTS, such institution has earned a 1 or 2 composite rating. In the case of the OTS that system is called a MACRO rating and under the FDIC the acronym is CAMEL. Each system rates the strengths and levels of Capital, Assets, Management, Earnings, and Liquidity of an institution, with 1 being the highest rating and

5 being a very troubled institution. Additionally, it should be noted that with the minimum OTS tangible capital to assets ratio set as low as 3% and NC savings banks at 5%, excluding goodwill, and a requirement for 5% liquidity by the OTS, with NC savings banks at 10%; it appears our requirements may be more stringent. While this policy has been followed, the result has been the conversion of a group of institutions to this type of charter which are well recognized as being sound institutions, it has also created a list of institutions which the mid-size and larger banks have used as a "shopping list" of candidates that they first consider to be merger or acquisition candidates. This thought leads us to the topic of discussion HR 3615 which is on the agenda today.

Until the opportunity for institutions to become a state savings bank arose, all conversions from mutual to stock form, including merger conversions and conversion acquisitions, required the approval of an application for such transaction not only by our office for state chartered institutions but also by the Office of Thrift Supervision. Since the institution was seeking approval by the OTS, and since the OTS had been overseeing conversions since the 1960's and had conversion regulations in place, all plans of conversion received approval and were conducted under its regulations, rules and policy guidelines. While our office had adopted conversion regulations as set out in Title 4, Subchapter 16G of the North Carolina Administrative Code, those regulations were almost verbatim the same regulations adopted by the OTS, therefore, we provided very little input or oversight into the process of conversions, merger conversions or conversion acquisitions. The only policy statement published in the Federal Regulations which affects merger conversions or conversion acquisitions which has not been adopted by the Division, and of which we are aware, is 12 CFR Section 571.5(d). In summary, it provides that in a merger or acquisition, if any officer of the acquired institution will, as a result of the transaction, receive compensation, including deferred compensation, increased in excess of the greater of $10,000 or 15% more than that currently received, this fact will give rise to a presumption of unreasonableness. Such presumption may be rebutted.

Now that state chartered savings banks are not supervised by the OTS, those institutions wishing to convert to stock or engage in a merger conversion or acquisition conversion must apply to our office and receive approval of their plan of conversion in order to proceed. As stated, our conversion regulations are almost verbatim the same as those in force by the OTS and the differences are, in our view, not substantial or material. While our office has no such published policy statement creating a rebuttable presumption, we do review the levels of compensation to be received by an officer of a merging or converting institution. In fact, unlike any requirement of the OTS of which we are aware, we require the institution to present our office with a spread sheet which summarizes all of the readily ascertainable economic benefits to be received by <u>any</u> party to a merger conversion or acquisition conversion, including the members/depositors, community, directors, officers, employees and acquiror presented on a present value basis. We adopted such a procedure

after noting that in the typical transaction regulated under the OTS rules and guidelines that the principal beneficiary to these types of transactions is the acquiror. We believe that our request for this type of analysis to be presented as a confidential portion of the application filed with our office, has encouraged the boards of directors of acquirees to consider not only the increased services such institutions are attempting to obtain for their member depositors (the value of which can not be readily quantified), but also the economic benefits and to whom such benefits accrue. A review of transactions conducted under the OTS rules would cause one to conclude that while limiting by regulation the amount which insiders could potentially receive may have worked to the benefit of the acquiror, it has also worked to the detriment of the depositor/member. And it has certainly imposed an artificial constraint on free market forces.

We have expanded the disclosure requirements and presentation of benefits not only to insiders but the transaction in general, by requiring that information to be presented in tabular form. For example, we require that the institution show the current salary, including base salary and deferred compensation and perks and the proposed salary and benefits side by side in a table. If the transaction involves stock grants or stock options, we require that presentation in tabular form, including dollar values of the grants or options using assumptions as to increases in value which may accrue to the recipient. We are of the view that inasmuch as the transaction can not occur without the approval of the majority of the members and the members have the power to vote to approve or disapprove the transaction, our concern should be focused on ensuring that a full, fair and adequate disclosure of the facts be presented to the members so that they can determine if they are in favor of it or not. We are of the view that the democratic process works in this type of transaction as well as it works in November every two years.

Therefore, while we believe that the Congress is rightfully concerned about this important area of transactions as it may affect the financial services available to the American public, we do not believe that this is an area which requires federal legislation, or additional regulation. We believe that states have the power to regulate this type of transaction, and we certainly believe that the approach followed in North Carolina makes as much or more sense than the limitations imposed under the federal OTS system. Furthermore, we believe that informed member/depositors can review a proxy statement, make a decision and vote on whether they support a transaction proposed by management without paternalistic protection by the federal government. We do not believe that artificial regulatory constraints should be imposed on free market forces. To date, there has been one proposed transaction in which the members convinced management that they would not support such a transaction and one transaction in which the vote was hotly contested. We believe that these two examples indicate that the free market forces do and will work to set limits on what is acceptable.

Robert A. Jacobsen
January 20, 1994

We would be remiss not to note that in the typical conversion from mutual to stock form, as well as in a conversion/merger or conversion/acquisition, the parties involved also have their plans reviewed and approved and their disclosure documents reviewed by other regulatory agencies. For example, if the transaction involves the conversion of a mutual to be acquired by a state chartered bank owned by a holding company whose stock is publicly traded, the parties file applications with the FDIC for the purposes of continuation of insurance of accounts, the Federal Reserve Board, which regulates holding company's activities, the Securities and Exchange Commission, to review offering materials and disclosure, and the State Commissioner of Banks, who oversees the bank into which the SSB will be merged to ensure safety and soundness following the consummation of the transaction. If the acquiror is a nationally chartered bank, substitute the Office of the Controller of Currency for the State Commissioner of Banks. The point being that all those regulators of various activities have reviewed these types of transactions and none have seen the necessity to adopt and impose more regulations to correct any noted deficiency. Nor have any of those agencies contacted us to advise that they were having a problem with the way things were being handled by our Division.

Additionally, we believe that the information in the packets furnished members of the subcommittee regarding the transactions and the participation of the member/depositors in such transactions as investors, supports our view that management's approach in structuring transactions which provide for a deposit premium to all depositors have added a dimension to this type of transaction which benefits all member/depositors not just the few who are also professional investors and speculators. This is a provision which has not been and would not be permitted under the OTS approach. Limiting the terms of transactions only to those viewed as acceptable by a group of regulators eliminates creativity and stifles experimentation. As has been the case previously, the results of such creativity may be adopted by others in future transactions.

We are aware of the arguments that the only reason Boards of Directors adopt a plan of conversion merger is to reward themselves and what they should be doing is adopting plans of conversion with the intent to operate as a stock institution for some time cause the stock price to increase and then to sell out at a profit. However, as we know, stock prices go down as well as up. we would note that a number of mutual institutions which converted to stock were subsequently taken over by the RTC with no money paid to the stockholders. In other words those member/depositors who bought initial isssue stock in those stock conversions and did or could not sell such stock soon thereafter because of the thin market which exists in many of the smaller offerings, lost their entire investment, less whatever, if any, dividends were returned to the purchasers prior to the institution failing. In any event, we believe that the boards of directors of the various institutions are best able to weigh the risks and rewards of the various options open to them and to the institutions they are elected to operate and to determine the course of the institutions they have been elected

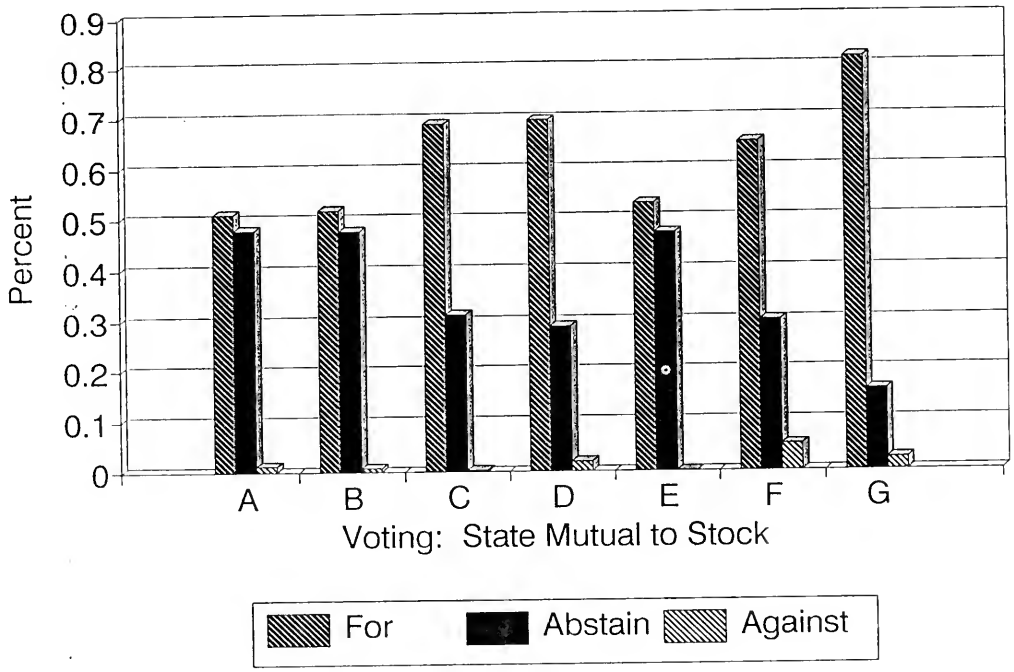
to control, and as long as the decisions they make are based on prudent business judgment and such decision does not adversely affect the safety and soundness of the institution, it is not our office's purpose nor the purpose of the federal government to impose its business judgment on the operation of these institutions.

In conclusion, we would remind the members of the Subcommittee, that while it has been presented with, or will receive, a great deal of information about many types of the transitions which have been occurring within the financial institutions community and who benefits and who loses, of all the transactions we have discussed, whether it be a charter conversion from federal or state savings and loan to an State savings bank, a conversion from mutual to stock, a merger conversion, a conversion acquisition, a stock merger or a cash sell out, the depositors are assured of receiving the full, insured value of their deposit accounts and, except a takeover by the RTC, none can occur without the majority vote of the members or stockholders.

Thank you for the opportunity to appear before you, we will be happy to respond to questions from members of the Subcommittee.

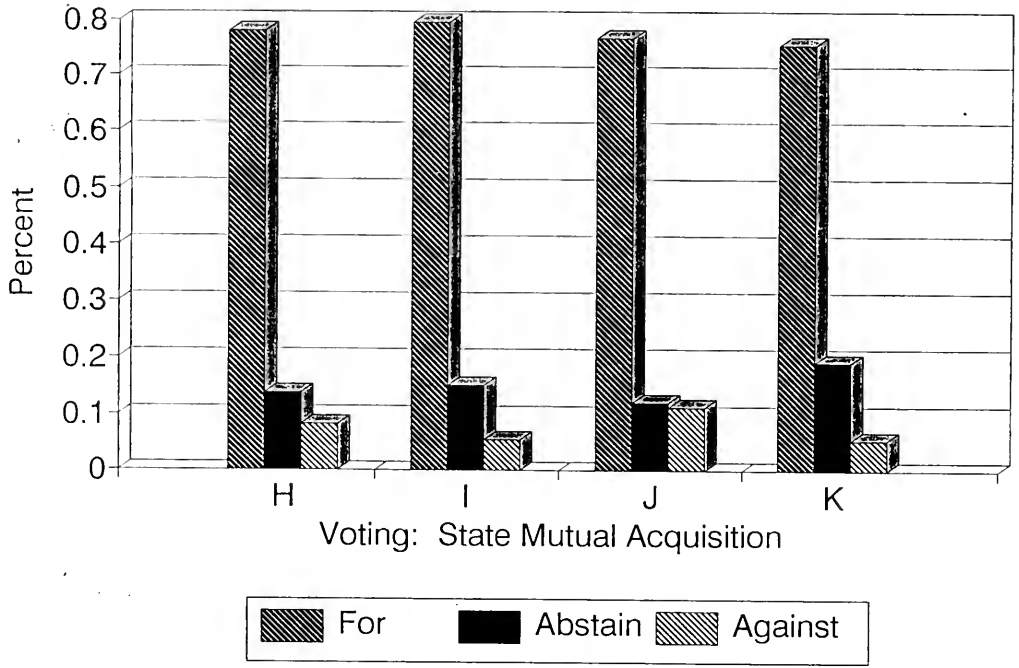
N.C. State Mutuals Converted to Stock

State Rules



N.C. Mutual Assoc. Converted & Merged

State Rules



N.C. Mutual Assoc. Converted & Acquired

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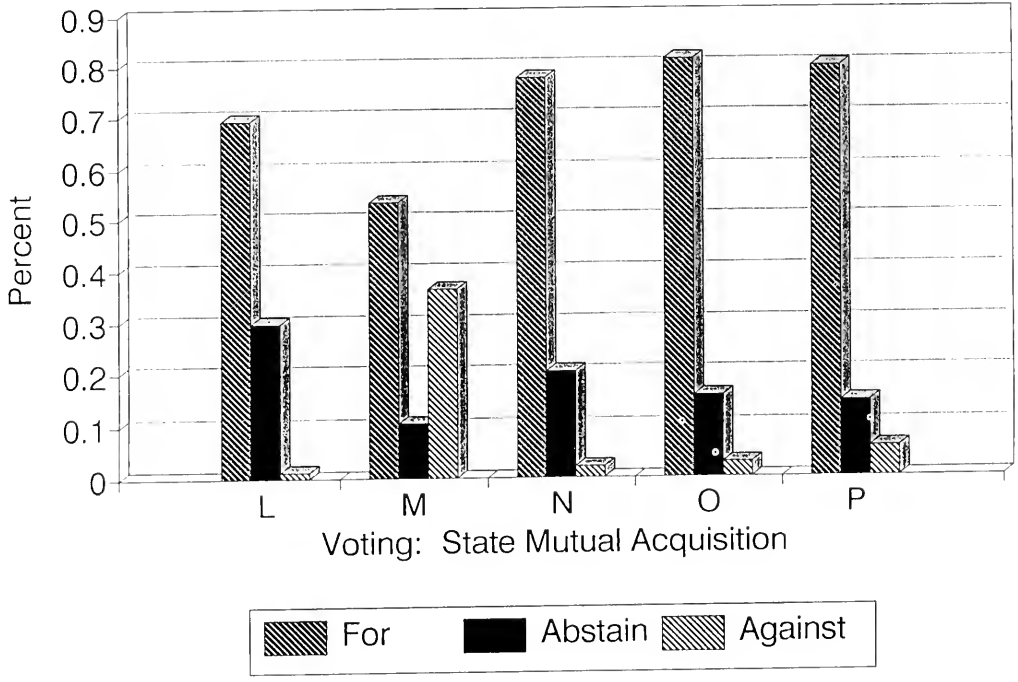
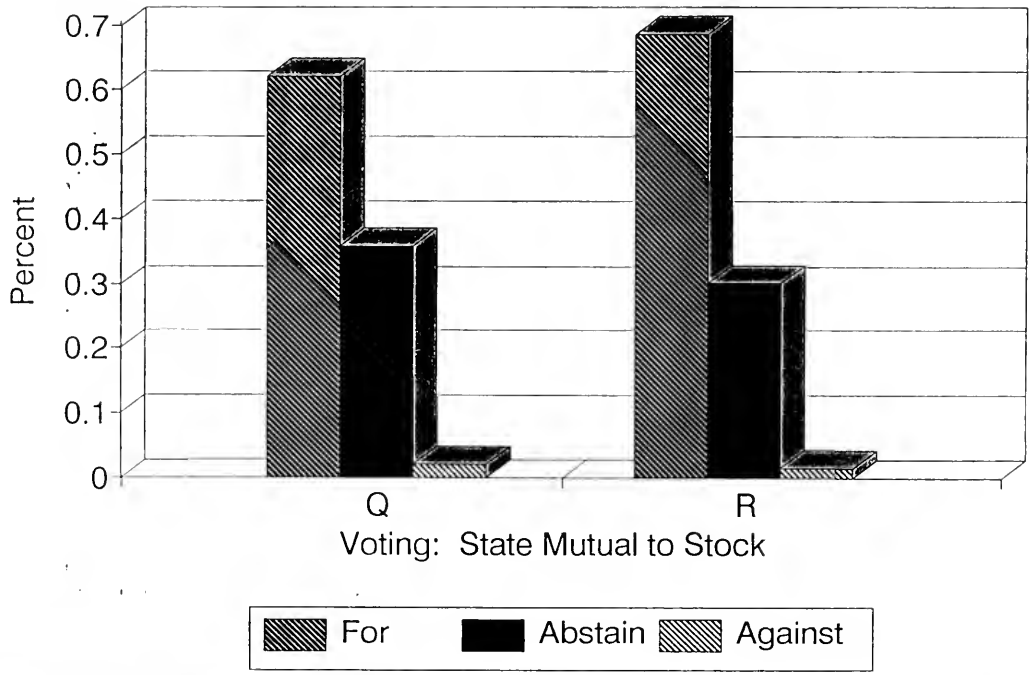


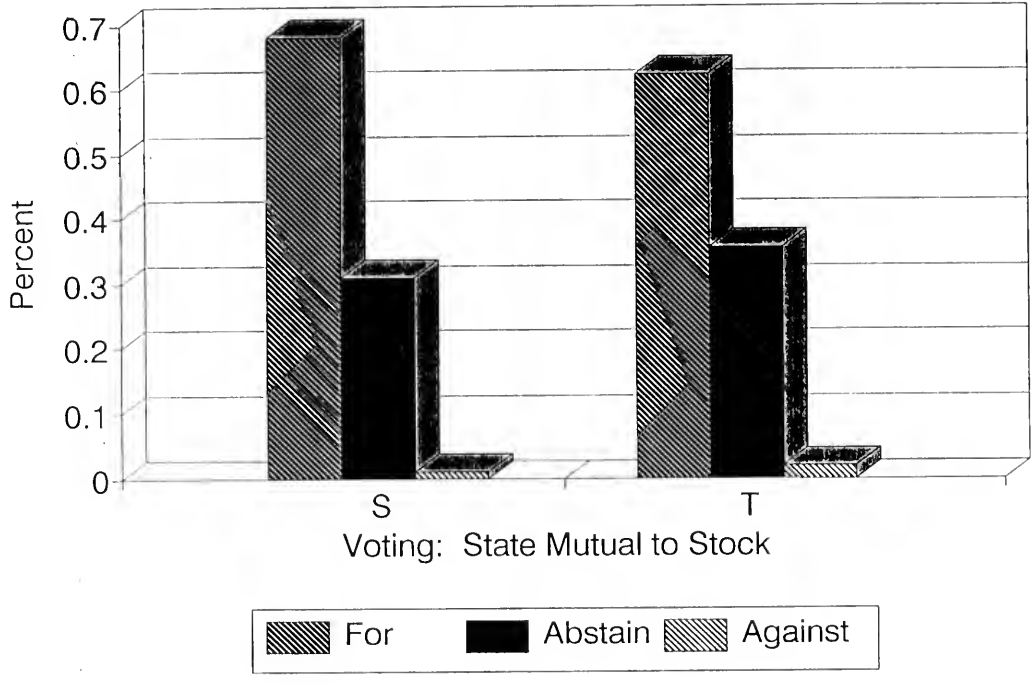
N.C. State Mutuals Merged

Federal Rules



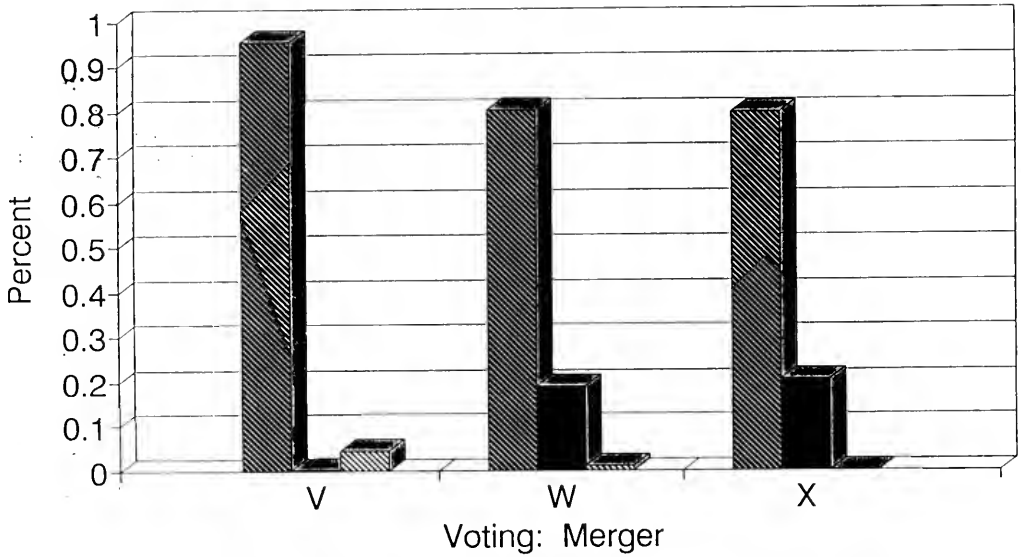
Fed. Mutual Assoc.Converted & Merged

Federal Rules



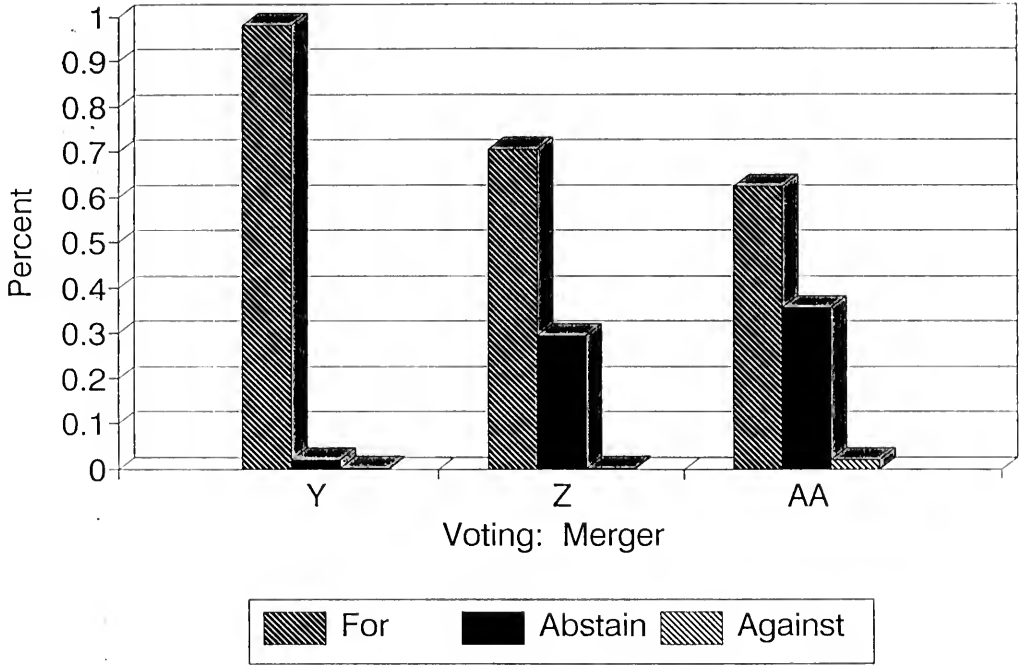
NC Stock Institutions Acquired by Banks

State Rules



NC Stock Institutions Merged

Federal Rules



Federal Stock Institutions Merged

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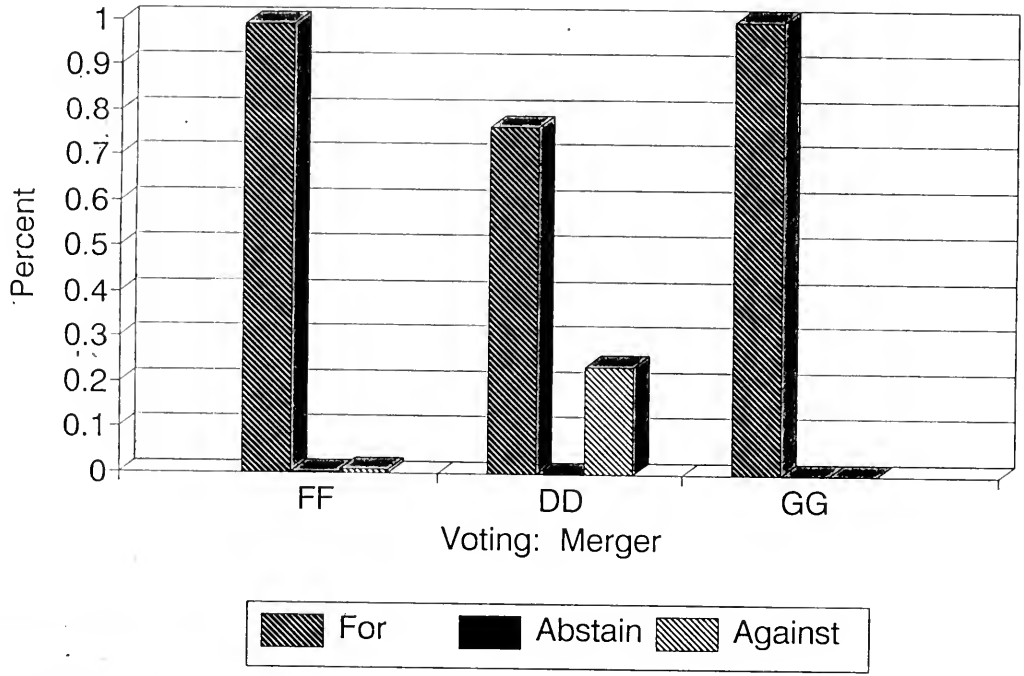

N.C. State Mutuals Converted to Stock

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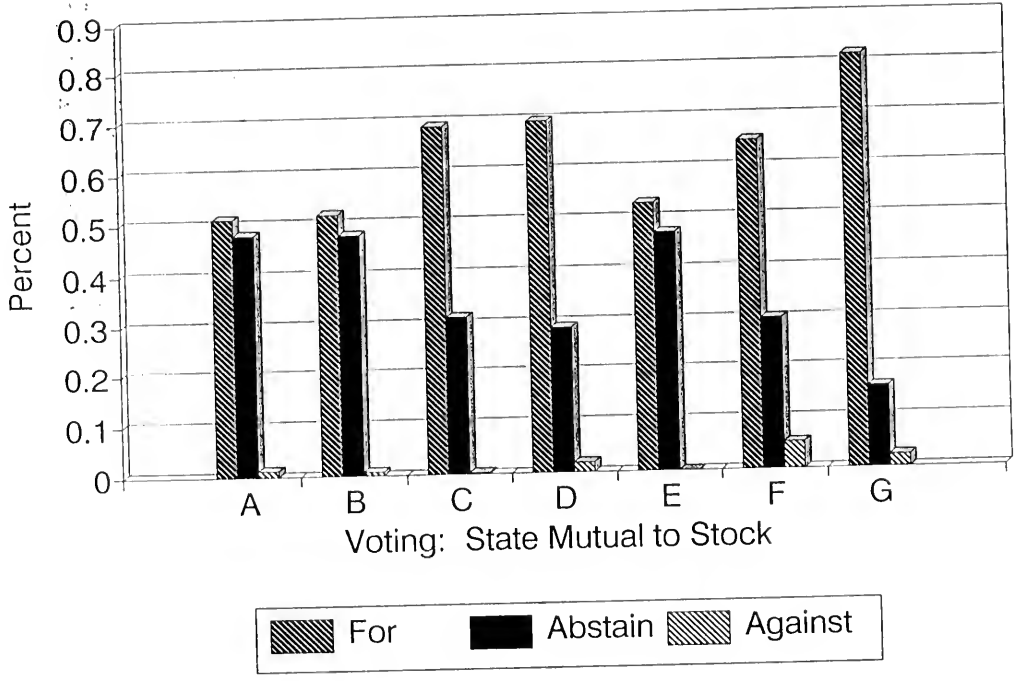

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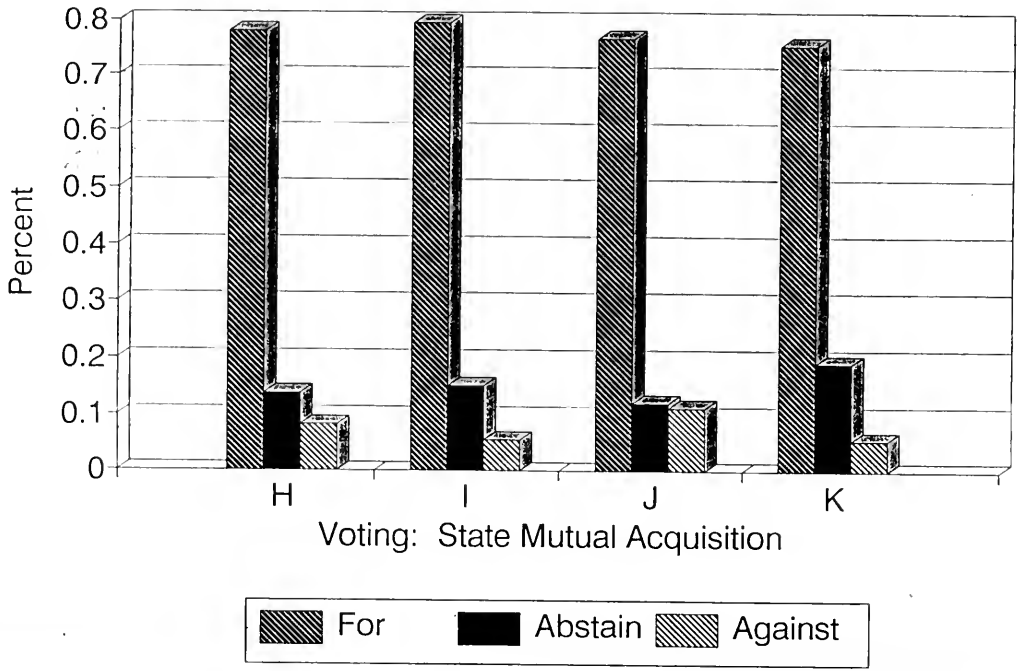
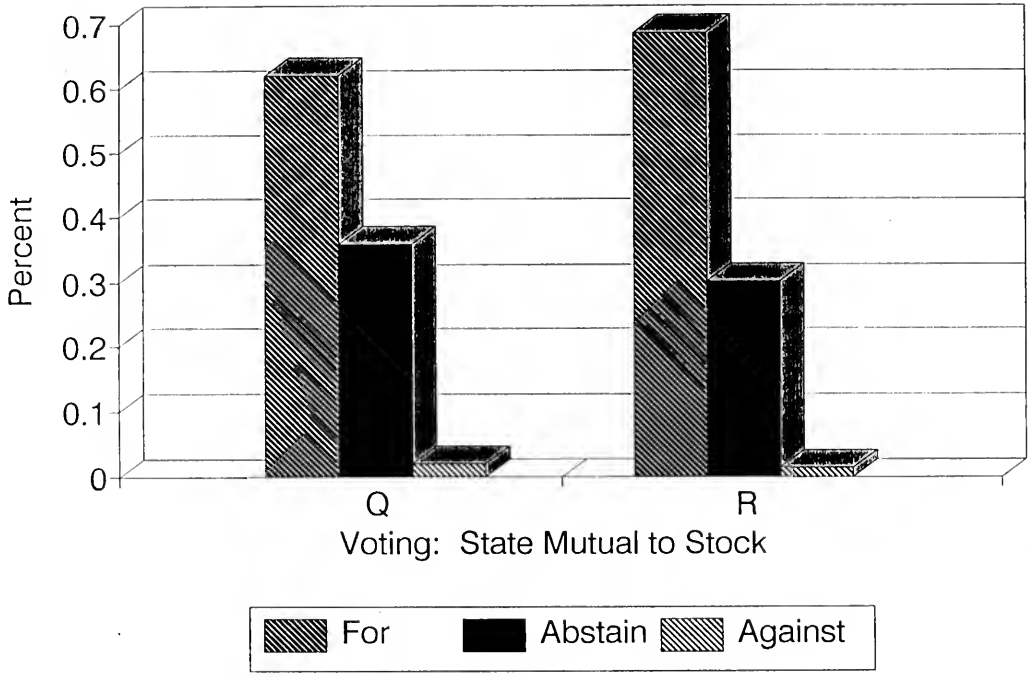
State Rules



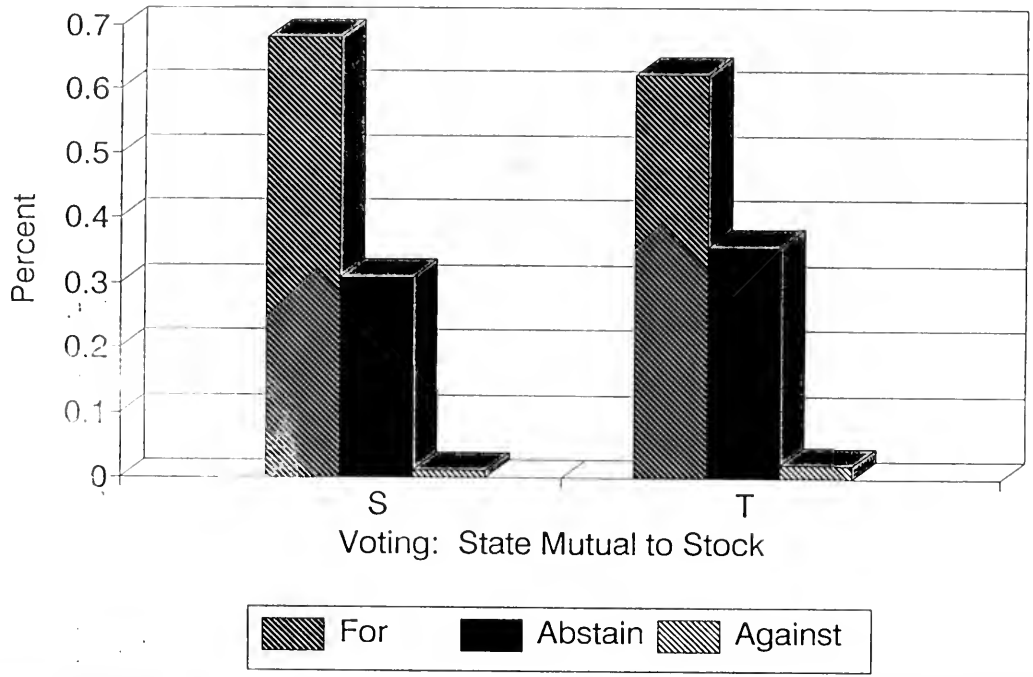
N.C. State Mutuals Merged

Federal Rules



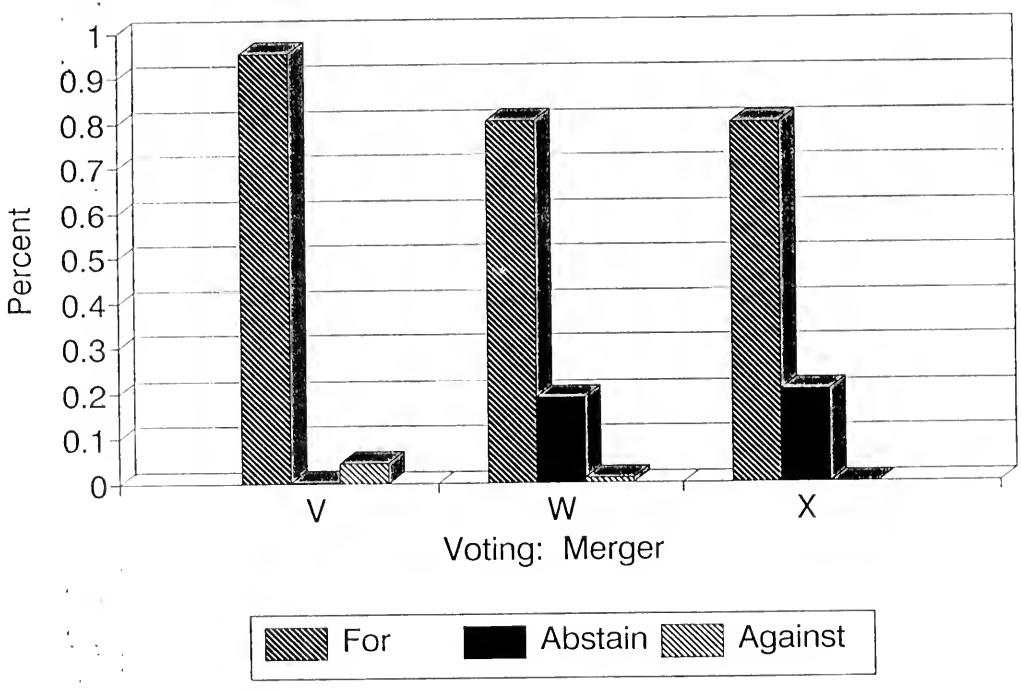
Fed. Mutual Assoc.Converted & Merged

Federal Rules



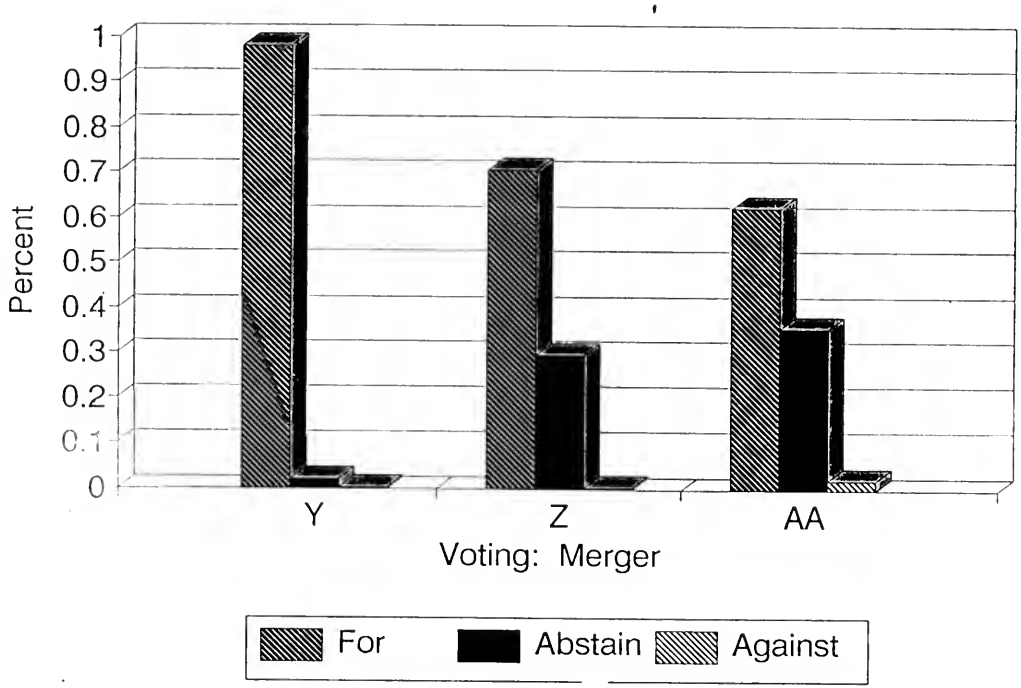
NC Stock Institutions Acquired by Banks

State Rules



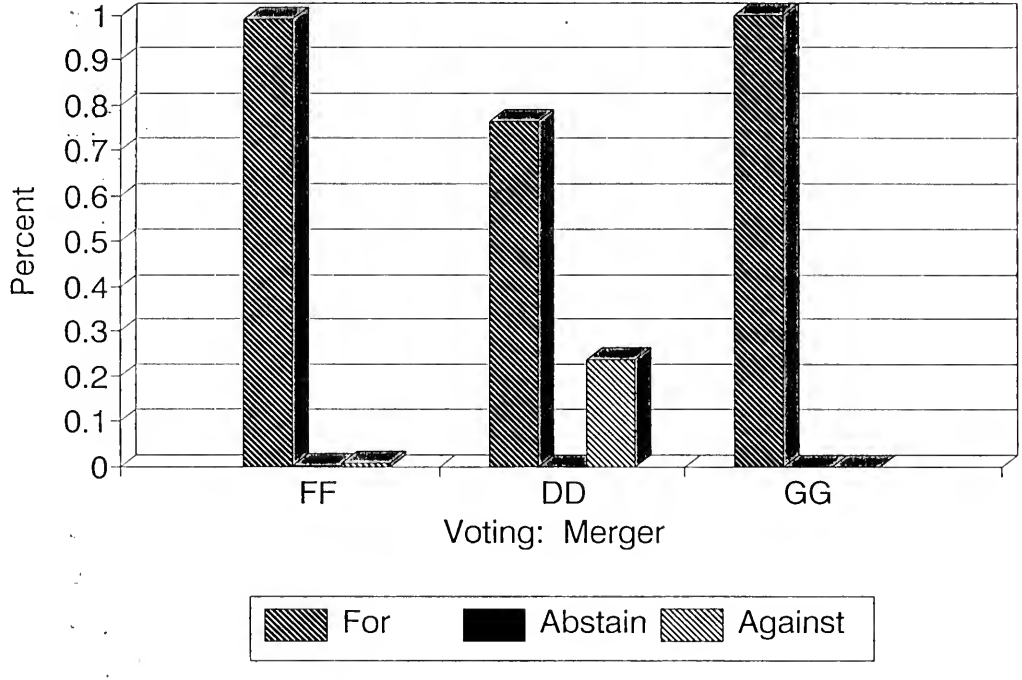
NC Stock Institutions Merged

Federal Rules



Federal Stock Institutions Merged

Federal Rules



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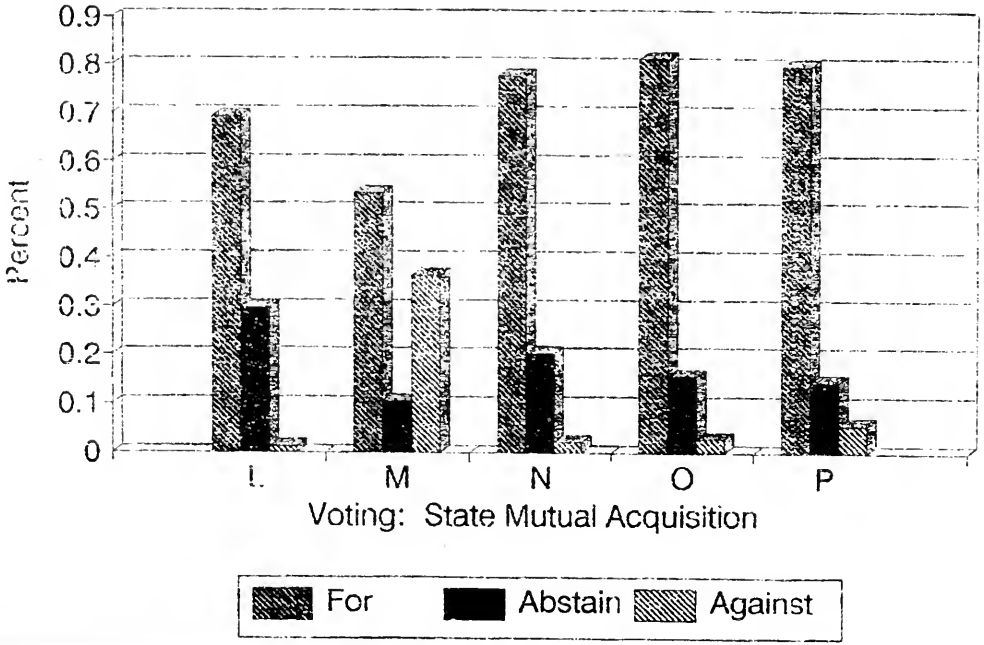

BARRY NAKELL
Attorney-At-Law
1310 Le Clair Street
Chapel Hill, N.C. 27514
(919) 962-4128

December 30, 1993

Mr. Robert A. Jacobsen
Administrator, Savings Institution Division
North Carolina Department of Commerce
1110 Navaho Drive, Suite 301
Raleigh, N. C. 27609

Dear Mr. Jacobsen:

I am writing to advise you that I represent Mr. Steven F. Blalock in response to the letter to you dated December 28, 1993 from Mr. Edward C. Winslow III.

I am writing to respond to the letter because on December 20, 1993, Mr. Winslow invited Mr. Blalock to his office only to threaten Mr. Blalock that he would write such a letter to you, because Mr. Blalock is the only person identified by name in the letter, and because Mr. Blalock is the only person outside of your office to whom the letter shows that a copy is being sent.

The letter, however, makes no suggestion of conduct of Mr. Blalock that might be within the jurisdiction of your office.

The letter refers to no evidence of any violations of the Proxy Solicitation Regulations. Instead, the letter uses terms such as "We believe . . . ", "For example, rumors have been spread . . . ", "We have been told of numerous allegations . . . ", "We have been told that . . . ", "These contacts, we understand . . . ", and "We understand . . . " The only concrete information referenced in the letter is newspaper reports, some of which reportedly included quotations of statements attributed to Mr. Blalock. Such innuendo and its accompanying speculation provides no basis for any investigation. The letter makes no effort to show that Mr. Blalock has engaged in any conduct that comes within Section .0509 of Chapter 16G of Title 4 of the North Carolina Administrative Code. Indeed, the letter, on pages 2-3, provides an incomplete quotation of the regulation and says that the omitted portions are "inapplicable" without explaining that conclusion.

I would like to advise you that Mr. Blalock has never engaged in proxy solicitations with regard to the proposed conversion merger of Home Savings Bank of Albemarle and does not intend to engage in such proxy solicitations.

Mr. Blalock is an attorney licensed to practice in the State of North Carolina. He has acted in a professional manner in the representation of clients who have an interest in the proposed conversion merger of Home Savings Bank of Albermarle, and his representation of those clients has not included proxy solicitations. To the extent that Mr. Blalock has spoken to the press, such activity is protected by the First Amendment to the United States Constitution as well as Article I, Section 14 of the North Carolina Constitution. See Gentile v. State Bar of Nevada, 111 S.Ct. 2720 (1991); Hirschkop v. Snead, 594 F.2d 356 (4th Cir. 1979).

As you may be aware, the United States Congress has under consideration legislation with regard to the conversion merger issue, H.R. 3615 and the Financial Institutions Subcommittee of the House Committee on Banking, Finance and Urban Affairs has scheduled a hearing in North Carolina on the subject on January 20, 1994. The matter has understandably also been the subject of widespread discussion in professional and public press. "To the extent the press and public rely upon attorneys for information because attorneys are well-informed, this may prove the value to the public of speech by members of the bar." Gentile, supra, 111 S.Ct. at 2735.

↖ U.S. Supreme Court

For the foregoing reasons, I believe that the innuendo and speculation in Mr. Winslow's letter provide no basis for your office to consider an investigation. In any event, there is no basis to believe that your office has any jurisdiction with regard to Mr. Blalock. It would appear that the letter to you, like the threat in the earlier meeting with Mr. Blalock, is simply an improper effort to intimidate Mr. Blalock from carrying out his professional responsibilities, and it would be inappropriate for your office to give any credence to that effort.

I trust the foregoing information and representations will be sufficient to put this matter to rest. I would be happy to provide you with further appropriate information or discuss the matter further with you if you wish to do so.

Very truly yours,

Barry Nakell

Barry Nakell

cc: Mr. Edward C. Winslow III

BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, L.L.P.

L P MCLENDON JR
HUBERT HUMPHREY
EDGAR B FISHER JR
JERRY W AMOS
W ERWIN FULLER JR
JAMES T WILLIAMS JR
M DANIEL MCGINN
MICHAEL D MEEKER
WILLIAM G MCNAIRY
EDWARD C WINSLOW III
HOWARD L WILLIAMS
GEORGE W HOUSE
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REID L PHILLIPS
ROBERT A SINGER
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RANDALL A UNDERWOOD
S LEIGH RODENBOUGH IV
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V RANDALL TINSLEY
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ALLISON M GRIMM
JEAN C BROOKS
MARY ANN MULLIN
JAMES C ADAMS II
ELIZABETH S BREWINGTON
JOHN A EASON
WAYNE A LOGAN

ATTORNEYS AND COUNSELLORS AT LAW

2000 RENAISSANCE PLAZA

POST OFFICE BOX 26000

GREENSBORO, NORTH CAROLINA 27420

TELEPHONE: (910) 373-8850

TELEX: 574301

FACSIMILE: (910) 378-1001

AUBREY L BROOKS (1872-1958)
A H HOLDERNESS (1904-1905)
L P MCLENDON (1890-1950)
KENNETH M UPTON (1930-1974)
C T LEONARD JR (1929-1983)
CLAUDE C PIERCE (1913-1988)
THORNTON H BROOKS (1922-1986)

OF COUNSEL
G NEIL DANIELS

RALEIGH OFFICE

SUITE 760 HILLSBOROUGH PLACE
225 HILLSBOROUGH STREET
RALEIGH, NORTH CAROLINA 27603
(919) 828-2252
FACSIMILE (919) 832-7682

WRITER'S DIRECT DIAL

(919) 271-3112

December 28, 1993

Mr. Robert A. Jacobsen
Administrator, Savings Institution Division
North Carolina Department of Commerce
1110 Navaho Drive, Suite 301
Raleigh, N.C. 27609

Re: Home Savings Bank of Albemarle, S.S.B.

Dear Mr. Jacobsen:

We would like to bring to your attention what we believe are violations of the proxy solicitation rules in connection with the proposed conversion merger of Home Savings Bank of Albemarle, S.S.B., Albemarle, North Carolina ("Home Savings"). We are concerned that they are continuing. We believe that people in the Albemarle community ("Opponents") who apparently oppose the Home Savings Plan of Conversion have disseminated unapproved, premature and misleading communications to Home Savings members, resulting in the spread of misleading information in violation of the regulations of the Administrator of the Savings Institutions Division of the North Carolina Department of Commerce (the "Administrator") at N.C. Admin. Code, tit. 4, Chpt. 16G, Section .0500 (the "Proxy Solicitation Regulations").

These violations are particularly distressing in light of the widespread publicity and interest generated by recent mutual to stock conversions nationally and by conversion merger transactions in North Carolina. As you know, in North Carolina, press interest and public discussion about such transactions has been intense, particularly in light of the Shelby Savings and Graham Savings transactions and the recent introduction of H.R. 3615. Many of the press reports concerning conversion mergers in North Carolina and elsewhere have been incorrect or exaggerated in a number of important respects.

The proxy solicitation violations in the Albemarle community are even more troubling in light of the fact that Home Savings and BB&T, upon advice of counsel, have scrupulously adhered to the

Proxy Solicitation Regulations. As you can appreciate, this has sometimes been difficult to do in light of what apparently is being said about the Home Savings directors and officers and the proposed transaction.

Much of what is being said is quite personal and is completely false. For example, rumors have been spread that certain guaranteed rates of return can be made if Home Savings does a stand-alone conversion rather than a conversion merger with BB&T, that certain officers would make millions of dollars under the conversion merger and that general proxies will be used. These assertions, as you know, are completely false, but Home Savings' inability to respond and challenge these assertions at this time because of the Proxy Solicitation Regulations gives these assertions credence; these rumors -- false, insidious and unfair -- left unchallenged can poison Home Savings' ability to conduct a fair and proper solicitation once a proxy statement has been approved by you for mailing.

The violations affect a number of different rules and are summarized below.

I. The Opponents are Illegally Disseminating Proxy Solicitation Materials Without the Required Administrator Approval.

A. The Opponents' Proxy Solicitations Must Be Approved by the Administrator.

The Proxy Solicitation Regulations set forth important procedures to ensure orderly and fair proxy solicitations in connection with the conversions of North Carolina chartered savings banks.

First, applicable proxy solicitation material must be authorized in writing by the Administrator prior to use.[1] A similar rule applies to any personal solicitations, under which the Administrator must approve preliminary copies of all material to be furnished to "individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation."[2]

Section .0509 of the Proxy Solicitation Regulations imposes these approval requirements on "every solicitation of a proxy ... for the meeting at which a plan of conversion will be voted upon,"

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[1] Proxy Solicitation Regulations, § .0510.

[2] Proxy Solicitation Regulations, § .0513(d).

with certain inapplicable exceptions. Accordingly, the Opponents' proxy solicitation materials must be authorized by the Administrator prior to use.

We have been told of numerous allegations of proxy solicitation activities of the Opponents in violation of Section .0509 of the Proxy Solicitation Regulations, including extensive contacts with the press, repeated communications directly with members of Home Savings, efforts to organize community meetings of depositors and attempts to solicit support for a class action lawsuit.

We believe that these activities by the Opponents constitute illegal proxy solicitation. As you know, proxy solicitation is defined broadly as the furnishing of any "communication to savings bank members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy."[3] While the Opponents may not yet have specifically asked for proxies from Home Savings' members, they are engaging in proxy solicitation. At a minimum, the Opponents are seeking to cause Home Savings' members to withhold proxies to be sought by management of Home Savings in support of the Plan of Conversion. Under federal law, which contains restrictions comparable to those contained under North Carolina law,[4] the Securities and Exchange Commission's authority to regulate proxy solicitations extends "to any writings, whether or not they strictly solicit a proxy, which . . . are part of a continuous plan ending in solicitation and which prepare the way for its success."[5]

1. Statements to the Press.

Numerous news articles have been published quoting statements by the Opponents which obviously are calculated to encourage Home Savings' members to withhold proxies sought by management. For example, Steve Blalock, a local Albemarle attorney and widely known opponent of the Plan of Conversion, has discussed with the press his opposition to the conversion merger and speculated about the

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[3] 4 N.C.A.C. 16G § .0103(23).

[4] The definition of solicitation under 4 N.C.A.C. 16G § .0103(23) is virtually identical to the definition of solicitation under Rule 14a-1(1)(3) of the Securities Exchange Act.

[5] IV Loss and Selligman, Securities Regulation, p. 1949 (3rd ed. 1990)(citing SEC v. Okin, 132 F.2d 784, 786 (2d Cir. 1943), 56 Harv. L. Rev. 829 (1943)).

terms of the proposed transaction on several occasions. See, e.g., The Messenger, Oct. 14, 1993 (quoting Mr. Blalock as stating that "[t]he depositors would actually be better off if Home Savings would close down and liquidate. Then they would get the $20 million net worth you say Home Savings has. They would actually be paid $20 million in cash"); The Messenger, Nov. 18, 1993 (quoting Mr. Blalock as follows: "just assume [Home Savings] has $140 million in deposits. If $40 million in sale proceeds were divided up among the $140 million in deposits, that could give depositors as much as $280 in profit for every $1,000 they have in Home Savings"); and The Charlotte Observer, Oct. 15, 1993.

In Kaufman v. Cooper Co., Inc., 719 F.Supp. 174, 184-185 (S.D.N.Y. 1989), the court held that oral statements made to the press as well as a press release stating that proxies would be solicited when the law permitted constituted premature proxy solicitation in violation of Rule 14a-1. The court noted in that case that:

> The quotations in the press do not directly or indirectly request proxies. Nevertheless, these statements and press release clearly express an intent to solicit proxies. Moreover, these communications speak critically of the incumbent management and clearly express some of the reasons why [the group] was formed and would seek to solicit proxies. Taken in the context of the upcoming proxy contest these statements must be viewed [as] a "step in the chain of communications" ultimately seeking shareholders' proxies for the upcoming Annual Meeting.[6]

The Opponents' statements and proxy solicitation efforts in the press are particularly unfair because of the restrictions imposed on Home Savings and BB&T that prevent them from responding at this time. Like the Opponents, Home Savings and BB&T are prohibited by the Proxy Solicitation Regulations from making statements to the press to influence the proxy solicitation without prior Administrator approval and prior to furnishing a written proxy statement to the members. The Proxy Solicitation Rules thus have prevented Home Savings from refuting the Opponents' allegations.

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[6] Id. at 185.

The result has been personal embarrassment to individuals at Home Savings. For example, when asked about the conversion merger after the Opponents' positions had been publicized, Mr. Hill, President of Home Savings, stated only that he had no comment and that the Prospectus was due in November and everything would be revealed at that time. The press painted this response in a way that suggested that Mr. Hill was hiding something. The Messenger, October 14, 1993, at 9.

2. Communications directly with Home Savings' members.

We have been told that the Opponents have been personally contacting Home Savings' members in an attempt to garner support for their opposition to the Home Savings Plan of Conversion. These contacts, we understand, have included efforts to set up community meetings of depositors at which time the Opponents would voice their position against the conversion merger.

3. Solicitation of participation in a class action.

One newspaper article quoted Mr. Blalock's description of the transaction and noted that "[a]nyone interested in banding together to file a class action lawsuit can call Mr. Blalock at 963-3407." The Messenger, November 18, 1993, at 4.

The Proxy Solicitation Regulations set forth the appropriate method for the Opponents to encourage Home Savings' members to oppose the transaction. The Messenger article ignores this procedure and, in addition, violates the Administrator approval requirement.

Solicitation of participation in a class action is unnecessary since class actions by their nature permit one person to represent a class. Why, then, are the Opponents making this solicitation? The device clearly is intended to poison the depositors against the transaction and to solicit the withholding of proxies.

The prior approval requirement permits your office to minimize the risk that inappropriate proxy solicitations, such as the communications being made to the press and directly to members of Home Savings by the Opponents, occur. By violating Section .0510 of the Proxy Solicitation Regulations, the Opponents have destroyed the fairness and integrity of the proxy solicitation process.

II. The Opponents Are Prematurely Soliciting Proxies.

In addition to the prior approval requirement, the Proxy Solicitation Regulations prohibit any solicitation unless the

person solicited "is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized in writing by the administrator."[7] To the best of our knowledge, no such proxy statement of the Opponents has been approved for use by your office.

Indeed, as you know, management of Home Savings has not filed its proxy statement. The Opponents thus have violated Section .0511 of the Proxy Solicitation Regulations by soliciting proxies before a written proxy statement (either on behalf of the Opponents or management) authorized by the Administrator has been furnished to members.

We understand that the Opponents are continuing to engage in this illegal premature proxy solicitation which has caused and, unless stopped, will continue to cause, undue, incorrect and unfair speculation about the actual terms of the conversion merger. Moreover, the violations and the threat of further violations threaten the integrity of the proxy solicitation process of Home Savings.

III. The Opponents' Communications Are Misleading.

The Proxy Solicitation Regulations prohibit the solicitation of proxies by means of any "communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact."[8]

In addition to the fact that various press statements and contact with Home Savings' members constitutes premature proxy solicitation by the Opponents, the Opponents are communicating misleading information, in violation of Section .0515 of the Proxy Solicitation Regulations. For example, Mr. Blalock stated to the press that "[t]he depositors would actually be better off if Home Savings would close down and liquidate . . . They would actually be paid $20 million in cash." The Messenger, Oct. 14, at 12. A liquidation and cash payment to depositors, as you know, is not a viable alternative available to Home Savings. This statement is misleading to depositors and obviously designed to encourage Home Savings' members to withhold their proxies by giving them the impression that they alternatively could receive a cash payment of $20 million.

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[7] Proxy Solicitation Regulations, § .0511.

[8] Proxy Solicitation Regulations, § .0515(a).

Moreover, it is important to note that the Home Savings Board of Directors has not reached final agreement with BB&T on the terms of the conversion merger. The Opponents are or should be aware of this fact. It is irresponsible for the Opponents to publicly speculate at this stage about the terms of a transaction which have not yet been determined. Premature proxy solicitation at this time also creates further emotional reaction and destroys the appearance of fairness in the solicitation process.

Scrupulous adherence to the Proxy Solicitation Regulations is particularly important in the conversion merger area. Conversion mergers are complicated and involve a number of issues that are difficult to explain without putting them into a proper context. The length and detail of the disclosure documents required in such transactions is confirmation of this fact. Conversion mergers are also highly susceptible to having issues taken out of context, with claims made that are false, such as claims that an acquiror obtains the mutual for free or that the insiders are "feathering their nests" at the expense of the depositors. We believe that these kinds of claims are being circulated in the Albemarle community, both orally and in writing, and they only further mislead and polarize the depositors.

What the Albemarle community and the members who would vote on the transaction deserve is a factual and correct statement of the issues so that the member vote can occur on an informed basis. Partial and incomplete statements at this stage, prior to the time that benefits are finalized and before the structure of the transaction has been properly explained, completely undermine the principles upon which the Proxy Solicitation Regulations are established and create a wholly inappropriate atmosphere for a fair solicitation. Home Savings and BB&T strongly believe that these transactions are for the depositors to decide. Depositors can fairly decide only if fully informed by a proxy statement which has been distributed in accordance with the Proxy Solicitation Regulations.

IV. The Illegal Proxy Solicitations Should Be Stopped.

Home Savings makes two requests of the Administrator:

1. We request that the Administrator investigate the events occurring in Albemarle and, if violations are found, enforce the Proxy Solicitation Regulations to put an end to the illegal proxy solicitation activities.

2. We request a meeting with you and the Opponents at your earliest convenience, to discuss the proxy solicitation process and

to work together to ensure that the Proxy Solicitation Regulations are complied with in the future.

We greatly appreciate your consideration and assistance.

Sincerely,

Edward C. Winslow III

cc: David Worth, Esquire
Steve Blalock, Esquire

STATEMENT TO SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND DEPOSIT INSURANCE BY JACK PALMER, JR. AND LARRY J. WILSON JANUARY 20, 1994

INDIVIDUAL STATEMENT OF JACK PALMER, JR.:

I was a Director of Shelby Savings and Loan Association for a period of 29 years, from 1960 to 1989, and retired from that position due to a then existing by-law containing a mandatory retirement age of 70. I have been a depositor at this institution for over 44 years and was at one time a borrower, having financed my first home there.

In April of 1992, I received notification from the savings institution (then known as Shelby Federal Savings Bank) about a special meeting of its members to be held May 28, 1992. The purpose of the meeting was the adoption of a State Savings Bank Charter. I was curious about the need to change from a Federal Savings Bank to a State Savings Bank, so I contacted the CEO and was told that this change would eliminate an annual audit, resulting in savings of several thousand dollars per year and would allow the bank to operate under less strenuous regulations. This appeared to make sense; however, I noticed that the attached proxy card at this meeting could be used on any and all matters "from time to time and from year to year until the proxy is cancelled in writing delivered to said institution". This made me aware of the fact that the directors would almost always by virtue of having these general proxies, have the votes to control any election that had to be decided by the membership. At the special meeting held May 28, 1992, the State Savings Bank Charter was approved by the proxy votes of the membership and the institution changed from Shelby Federal Savings Bank to Shelby Savings Bank, SSB. Now the bank would be operating under the N.C.E.C.D.-Savings Institution division rather than the U.S. Office of Thrift Supervision.

On December 7, 1992, CCB Financial Corporation, a North Carolina state bank holding company entered into a non-binding Letter of Intent with Shelby Savings Bank, SSB, to acquire Shelby Savings Bank in a conversion/merger. This was to be accomplished by Shelby Savings Bank converting from a mutual savings bank to a stock savings bank and immediately turning all stock over to CCB Financial Corporation, effectively becoming a wholly owned subsidiary of CCB Financial Corporation.

I heard about this Letter of Intent approximately two (2) weeks later. Being very interested in the operation of Shelby Savings Bank, I contacted the CEO and inquired as to how the conversion/acquisition was going to be handled. In particular, I wanted to know what the members, management, employees and directors would receive. I was told that under SEC rules, the management and directors were under a "gag rule" and could not discuss the matter.

On or about August 23, 1993, I, along with the rest of the membership of Shelby Savings Bank, received a notice of a special meeting to be held September 16, 1993, a new proxy card, a stock order form for subscribing for CCB Financial Corporation Stock, a 42 page prospectus, and a 99 page Proxy Statement, detailing the proposed conversion/acquisition of Shelby Savings Bank. This gave the membership approximately 24 days to study 141 pages of complicated information and try to understand what was happening to a mutual savings bank that had assets of slightly over $100 million, deposit liabilities of some $88 million and Tier I Capital of $11,206,000.00 (as of September 30, 1992). I was very concerned over the treatment of the members in this proposed transaction and began talking to other members (including other former directors) to determine, if I could, the level of opposition to this transaction, and any possible ways that we might try to stop it. As a result of these conversations, Larry Wilson and I, along with a group of other members, decided to voice our opposition publicly and to try to inform the members of exactly what was being proposed.

INDIVIDUAL STATEMENT OF LARRY J. WILSON:

I am a depositor in Shelby Savings Bank, SSB. I have had one or more accounts with Shelby Savings Bank or its predecessor, Shelby Savings and Loan Association for at least 25 years. I also have my home mortgage loan with Shelby Savings Bank. By virtue of those two facts ((1) that I am a depositor; and (2) that I am a borrower) I am a "member" of Shelby Savings Bank which is a state-chartered mutual savings bank. The North Carolina Statutes regarding Savings Banks are very clear. I quote from North Carolina General Statute Section 54-C-100, **"Members are the owners of a mutual savings bank."**

I became aware of the details of the proposed conversion/merger of Shelby Savings Bank in mid to late August, 1993, when I, along with all the other members, received a proxy solicitation and prospectus package from the Board of Directors of the Savings Bank. I read the information very closely and was appalled when I read the figures for the compensation of the President, Senior Vice-President, and the Board of Directors being proposed in the conversion/merger proposal. The compensation consisted of several different items including salary, bonus, "other compensation", an enhanced retirement plan, a management recognition plan, certain employment agreements, increased directors fees, a directors retirement plan, and a stock option plan, all totaling over $3 million.

The "benefits" to the members of Shelby Savings Bank consisted of: (1) Discount of 15% on purchase price of shares of stock in the acquiring bank, Central Carolina Bank (CCB); and (2) Charitable contributions of up to $500,000.00 to charitable organizations in Shelby or Cleveland County. As a member (and therefore an owner) of Shelby Savings Bank, I did not feel that a 15% discount on CCB Stock was fair compensation to the members, especially when compared with the package put together for the management and directors and also when compared with the deal that the acquiring bank, CCB, was getting, an approximately $13 million institution.

After discussions with the President and several of the members of the Board of Directors, it became apparent that I was not going to be able to persuade them to abandon or even amend their plan of conversion. After some work and a lot of luck, I found a provision in the North Carolina Administrative Code which required the proposed converting institution to provide a means of mailing for a member who wished to express his opposition to such a plan and who was willing to defray the costs to have his statement of opposition mailed to all of the members.

I am quite sure that the bank and the bank's attorneys were surprised by my request for an estimate of the cost of mailing such a letter of opposition as this provision had never before been exercised. It took a couple of days to get the information from the bank and, in the meantime, we had to contact other members to raise the necessary funds for such a mailing. This was particularly difficult as we did not have a membership list. By this time, we had a group of approximately ten depositors who were loosely organized but firmly united in our opposition to this proposed conversion/ merger. We were also firmly convinced that most members would oppose the conversion/merger if we could print out to them the specifics of the management's benefits. These specifics were set forth in the Proxy Statement, but were buried in the middle of the 90-plus page document.

The letter we sent to the members was a simple and straightforward one page letter which simply recited the facts out of the proxy statement and referred the reader to the respective page for further information. It also urged the reader to vote against the proposed transaction. I believe one of the keys to our success was the simplicity and easy reading of the letter. Once we got the information from Shelby Savings Bank regarding the estimated costs and were sure we had secured sufficient funds to pay those costs, we proceeded with getting the letters printed. Then a group of about ten (10) people stuffed 6,500 envelopes. These stuffed and sealed envelopes were then delivered to the bank's mass mail contractor on Friday, September 10, 1993, and all of them were mailed that day. Most of the members received their letter on Saturday, September 11th, or on Monday, September 13th, prior to the scheduled September 16, 1993 meeting. We have included a copy of the letter at the end of this statement.

On Monday night, September 13th, the Cleveland County Board of Realtors met at a regularly scheduled meeting and by a nearly unanimous vote came out publicly against the proposed conversion/ merger. By Monday, September 13th, and Tuesday, September 14th, the bank was receiving a large number of "No" votes and also members who were changing previous "Yes" votes to "No" votes. It is our belief that the public stance of the local real estate community aided the overwhelming response to our letter and made the Board of Directors finally realize the true level of opposition to this proposal. The Board of Directors at a special called meeting Wednesday night prior to the scheduled September 16, 1993, meeting, decided to withdraw their application for the conversion/merger and this killed the transaction.

JOINT STATEMENT OF RECOMMENDATIONS:

As to the proposed legislation, we believe that it is a step in the right direction. However, we believe that this legislation does not fully address the interests of the depositors in these types of conversion/mergers. We therefore submit the following recommendations:

1. The proposed legislation would result in limiting the benefits that could be paid to the management and directors of a converting (or acquired) institution. While this may result in making these conversion/merger transactions less attractive to the management and directors of the converting institution, it also makes it more attractive for the acquiring institution by virtue of being less expensive. It is our firm belief that this legislation, the regulations of the office of Thrift Supervision, and the State Savings Bank regulations should require that the members of the institution who are the ones who make the deposits into the institution and who pay the interest to the institution should be treated as owners whenever these institutions are converted or acquired by other institutions. This means compensating the members in place of, or in addition to, compensating the management.

2. Another major area of concern is the ability of the management and Board of Directors to rely on previously executed proxies which may be many years in age. It is our belief that such a significant and substantial change in the structure of an institution such as a conversion or conversion/merger should require approval by a majority of members either by in-person vote at the meeting or by fresh proxies which have been issued specifically for the purpose of voting on such a conversion or conversion/merger.

3. The regulations should require that the prospectus and proxy statement mailed to the membership in connection with a conversion or a conversion/merger transaction be mailed at least 45 days prior to the scheduled date of the vote. In our case, we received this packet of information some 24 days prior to the voting date. This is not a sufficient period of time to enable members to fairly and knowledgeably decide such a substantial and significant matter.

4. Either legislation or the regulations should specifically provide for a period of time for comments and/or objections by the members subsequent to the date on which the members receive the proxy and prospectus information packet. Under the North Carolina Regulations, the plan of conversion gets its final approval prior to the mailing of the proxy statement and prospectus to the membership. The only membership notification requirement is the placement of a small classified ad in a local newspaper once a week for two (2) weeks. This ad states that any member who wishes to comment or object to the proposed plan must do so within ten (10) days of the date of the advertisement. An interested member would first have to notice the small classified ad, and then go to either the local institution's office, or to the Office of the Savings Institution Division Administrator in Raleigh. Not having had the opportunity to examine such a plan, we are unsure if the plan would contain all of the information included in the proxy statement and prospectus. This ten (10) day period for comment or objection is clearly inadequate

and the period for objection or comment should be expanded to include some period of time after the membership actually gets a copy of the proxy statement and prospectus in its hands.

5. The regulatory scheme (at least at the state level) appears to be primarily geared toward protecting the management of both the converting institution and the acquiring institution. As indicated above, the approval process for these plans of conversion essentially preclude depositor members from being able to effectively and intelligently analyze and evaluate the full details of the plan of conversion before the time period for comment or objection has elapsed. The present regulatory approach, at least in North Carolina, appears to be geared not toward the protection of the members/depositors, but toward the promotion of the banking industry at large, and seems to take the attitude that as long as a proposal is "good business" for the banks then it will be approved.

We have attached (with the permission of the author) a copy of an article from Business North Carolina which illustrates very well the manner in which depositors/members are treated in these types of conversion/merger transactions.

TO ALL SHELBY SAVINGS BANK DEPOSITORS

We the undersigned depositors of Shelby Savings Bank request that you vote **AGAINST** the "Plan of Conversion" as proposed by the Board of Directors. Shelby Savings Bank is a mutual savings bank owned by its depositors and borrowers.

The transaction proposed by the Board of Directors in the Proxy Statement they sent you, if approved, would result in:

1. Shelby Savings Bank would be owned and controlled by CCB Financial, headquartered in Durham, North Carolina.

2. The Board of Directors will each receive "Director's Fees" of **$12,000.00 per year for 10 years** (see Page 55 of the Proxy Statement).

3. The Chairman of the Board of Directors will receive "Director's Fees" of **$18,000.00 per year for 10 years** (see Page 55 of the Proxy Statement).

4. The President and CEO will receive a five (5) year Employment Contract with total compensation in excess of **$200,000.00 per year** for each of the five (5) years (see Pages 50 and 54 of the Proxy Statement).

5. The Board of Directors will be given CCB Stock worth **$1,950,000.00** to be divided among the Board of Directors and the Senior Vice-President according to a "Management Recognition Plan" set forth on Page 53 of the Proxy Statement.

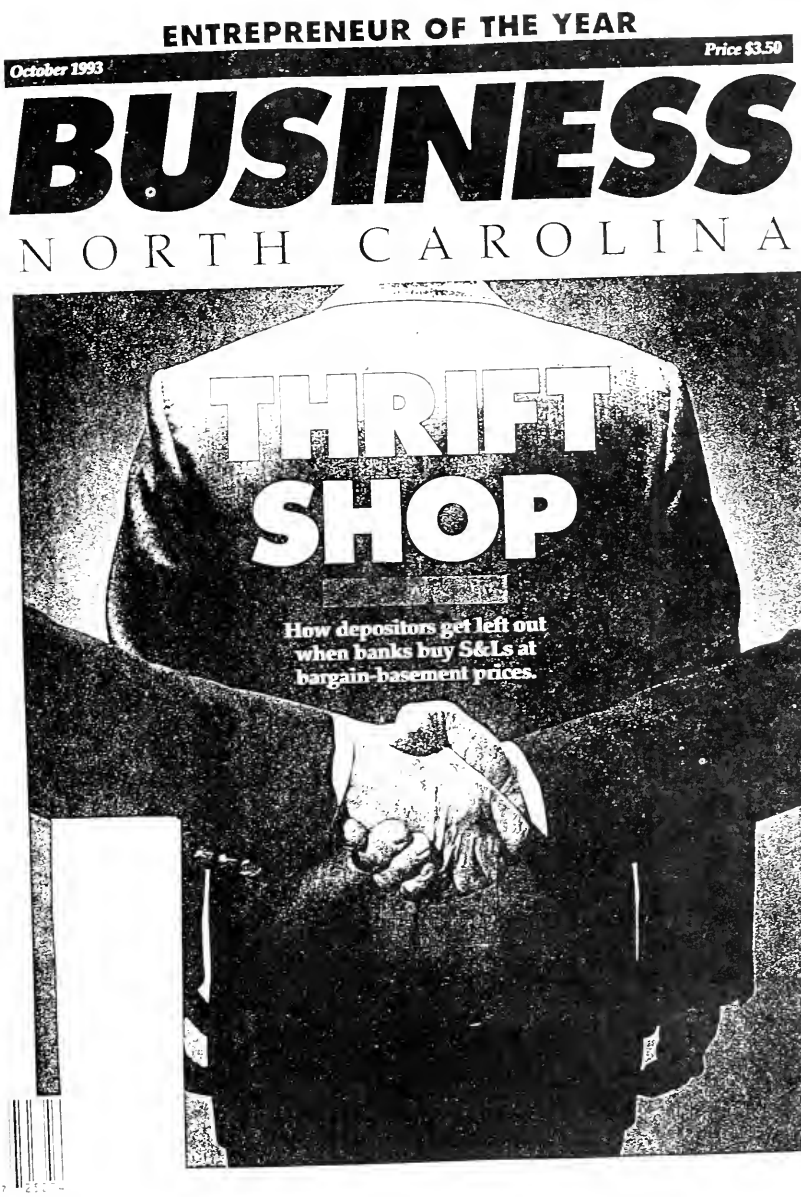
6. The Board of Directors will each receive certain stock options for CCB Stock having various estimated values as set forth on Pages 55 and 56 of the Proxy Statement.

7. The members (you) will have the opportunity to purchase CCB Stock at a 15% discount with a restriction that this stock can not be sold for a period of six (6) months. This is the only direct "benefit" to the members/depositors.

We strongly feel that this proposal is <u>not</u> in the best interests of Shelby Savings Bank, its depositors or the the community, but appears to be primarily for the benefit of the Management and Directors. We urge you to mark your Proxy Card "**AGAINST**" and mail it <u>today</u> to Shelby Savings Bank, Post Office Box 999, Shelby, NC 28151 0999.

If you have already voted, you can revoke that proxy by either: (1) attending the meeting on September 16th and voting in person; or (2) by a dated signed statement revoking all previous proxies and stating how you desire to vote in regard to the transaction. You should print as well as sign your name and include the date.

PLEASE TAKE THE TIME TO VOTE. A FAILURE TO VOTE MAY RESULT IN MANAGEMENT CASTING YOUR VOTES FOR APPROVAL OF THE PLAN.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GET OUT WHILE THE GETTING'S GOOD

By David Mildenberg

Home Federal Savings Bank of Statesville and Granite Savings Bank of Granite Falls share much in common. Each has been in business for decades, sticking to mortgage lending and avoiding fads that brought down more ambitious thrifts. Each has about $100 million in assets. Home Federal has stockholders' equity of $9.2 million, while Granite Savings' net worth is about $9.6 million.

And each is headed by an S&L veteran with more than 25 years' experience who believes his institution can no longer compete with banks. When it came time to sell out, however, each chose a different path.

Southern National Corp. is buying Home Federal, owned by stockholders since 1982, for stock worth $15.2 million. Employees get to keep their jobs, but the big winners are the thrift's 220 shareholders — especially CEO Ron Hawkins, who owns more stock than anyone else.

Centura Banks Inc. has bought Granite, a mutual, depositor-owned thrift, for $11 million of stock — $7 million less than Home Federal will bring. Granite's eight-member board gets the gravy — especially CEO J.D. Clawson, 58, who is guaranteed at least $137,000 a year until he turns 65. He was paid $80,791 last year.

Clawson also gets Centura stock worth $330,000 and options for 10,171 more shares. The other seven directors each receive $137,500 to $275,000 in Centura stock options on 5,000 to 7,000 more shares, plus $1,000 a month for serving on Centura's local board. Employees' jobs are guaranteed, their pensions doubled. Local philanthropies picked by the directors will split a half-million dollars.

What about depositors? They got the equivalent of a 15%-off coupon good on the purchase of Centura stock.

About a dozen such "merger-conversions," in which mutual thrifts offer themselves directly to banks, have been completed in the state, with grumbling limited to a few sophisticated investors and maverick thrift executives. "Those CEOs are getting hellacious contracts," Hawkins gripes, "and they're selling something they don't own." But when word of those contracts spread, controversy flared, culminating in Shelby Savings Bank's decision Sept. 15 to cancel its merger-conversion with CCB Financial Corp.

To get Granite's $9.6 million in capital, CCB sold Granite's depositors an equivalent amount of its stock. The bank's out-of-pocket "cost" — what it is paying officers, directors, employees and community groups, plus transaction fees — totals less than $5 million.

"It's like free capital for the banks," says

Banks are snapping up S&Ls by cutting sweet deals with their top brass. "CEOs and directors are getting hellacious contracts," a critic says, "and they're selling something they don't own."

more than $8 billion in assets from 43 S&Ls. (That includes pending acquisitions and excludes another billion or so from even more lucrative government-assisted deals.) Much of the growth, particularly for BB&T, CCB, First Citizens and Centura, came through merger-conversions after S&L officials decided they didn't want to operate as independent, stock-owned institutions.

Nobody would care about this except for the dramatic success of thrifts that converted to stock ownership, selling shares exclusively to their depositors. In most cases, the S&Ls were bought by larger institutions, making millions for their investors.

Among the prime examples: FedFirst Bancshares of Winston-Salem, which went public in March 1991 at $10 a share, then sold out 15 months later for a split-adjusted $40 a share. Regency Bancshares, owner of First Savings Bank of Hickory and Davidson Federal Savings Bank of Lexington, which went public on Dec. 31, 1990, for less than $7 a share and is selling out for nearly $37 a share, and Statesville's Home Federal, which 12 years ago was one of the state's first mutuals to convert to stock ownership. "Our stockholders will get roughly 10 times what they paid in courting dividends," Hawkins says.

In each case, Southern National was the buyer, paying stock worth about $140 million for the thrifts' combined assets of more than $750 million. The Lumberton-based company made an even bigger score in early August, agreeing to pay $181 million for The First Savings Bank of Greenville, South Carolina's largest thrift, with $2.1 billion in assets.

John Allison Jr., BB&T's savvy CEO, has spent the past four years ramming through the state's S&L industry like a one-man wrecking ball.

So lucrative are these deals that some S&L executives won't talk about them. At Robeson Savings in Lumberton, a $100 million S&L that sold stock to several hundred depositors in 1987, CEO Henry Melvin and CFO Ron Malstrom wouldn't divulge details of their pending sale to Centura. Neither would Centura.

Yet for every stock sale, there has been a merger-conversion similar to the Granite Savings deal, with banks walking away with S&Ls at a deep discount. BB&T alone has undertaken merger-conversions in Albemarle, Asheville, Edenton, Greensboro, Greenville, Mooresville, Reidsville, Thomasville and Wilmington.

And the pace is picking up, thanks in part to state S&L Administrator Bob Jacobson and his former top lawyer, Ron Raxter. It was at their urging, with backing from the S&L and banking industries, that the General Assembly passed a law in 1991 to charter state-regulated savings banks. Savings banks, which have existed for decades in the Northeast, are allowed to place slightly less emphasis on mortgage lending than S&Ls. The only opposition came from the liberal Southern Finance Project think tank in Durham, which worried that the new savings banks would quit making home loans in favor of riskier ventures.

The regulators' intent was to enable Tar Heel thrifts to get out from under the federal Office of Thrift Supervision and operate more like commercial banks. It would be better to deal with responsive bureaucrats in Raleigh, Jacobson and S&L officials argued, than politicized ones in D.C. So far, 60 — two-thirds of the state's S&Ls — have converted. Not a single application has been turned down.

But one of the law's unintended consequences has been to let some mutual S&L executives stuff their pockets fuller

than they otherwise could have. That's because Jacobson is more lenient than the feds in how much he'll allow those executives and their directors to receive in a merger-conversion. "When you start limiting who can get what, then the acquiring institution ends up getting all the benefits from the transaction," says David Worth, staff attorney for Jacobson's division.

The Office of Thrift Supervision, for example, won't let officers and directors receive stock grants exceeding 10% of the transaction value. In an $11 million deal, like the one for Granite Savings, they could get no more than $660,000 in stock and other benefits. They get at least double that amount in the deal Jacobson approved. The feds also won't permit a bank to raise the pay of an S&L manager more than 15%. The state doesn't care, figuring it's up to the banks to decide how much they'll pay their help.

First to benefit from this benevolence was William "Bill" Smith, who spent 40 years with $100 million-asset Mutual Savings Bank of Lenoir, the first thrift to have its merger-conversion approved by Jacobson. Granite Savings was second.

In return for supporting an $8.5 million merger-conversion with CCB, Smith, 67, got a guaranteed five-year contract at $225,000 a year, followed by retirement pay of $90,000 a year for 10 years. CCB stock worth $657,500 and $12,000 a year in directors' fees, plus options to buy more CCB stock, $50 other directors split an additional $668,000 in stock. The deal would not have been allowed by the feds, several industry officials agree.

Still, Smith is taking a pay cut — his 1992 cash compensation was $245,749. In comparison, 10 miles south in Granite Falls, John Forlines Jr. earned about $217,000 last year running the $361 million Bank of Granite. Often called the nation's best community bank, Bank of Granite's return on assets routinely tops 2%. Mutual Savings' ROA the past five years has been .7%.

"Bob Jacobson sold this to the state legislature with the idea that he was not going to micromanage these businesses," says Baxter, who left the state's employ last year to join Ward & Smith, a New Bern and Raleigh law firm that represents many North Carolina thrifts. "State regulators weren't going to play big brother. We would permit the institutions to make a business decision, and as long as it was fair and equitable, they could go ahead with it."

"The whole thrust of the securities rules which we administer for S&Ls is to maintain a basic fairness to prevent insider abuses," OTS spokesman Paul Lockwood says.

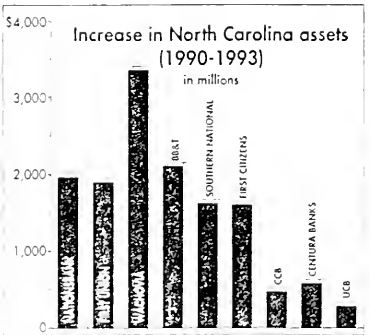
Now that the standard has been set by Bill Smith and J.D. Clawson, executives of state-chartered thrifts know how much to ask for when bankers come knocking. In the aborted $15 million deal with $100 million Shelby Savings, CCB planned to pay CEO Dean Whisnant $150,000 a year for five years, plus an inflation kicker. After that, he was to get five years of retirement pay at $125,341 a year. Then there was CCB stock worth $765,827 and $81 directors' fees of $12,000 a year and options on nearly 7,500 CCB shares. Whisnant, 65, had a base salary of $93,502 last year.

The thrift's chief financial officer, 52-year-old Christy Burton, was to get a five-year contract guaranteeing her $91,010 a year and CCB stock worth $540,852. And Shelby Savings' six directors were to get $12,000 a year in directors' fees for 10 years while splitting CCB stock worth $565,000. Depositors were to get that 15% of CCB stock coupon. Shelby, philanthropies would vie for $5,000,000, and CCB would have been a force in Cleveland County banking.

Whisnant, Clawson and others insist that greed isn't what's behind these deals. Rather it's fear of the future, concern for their communities, employees and depositors, and memories of such failed stock S&Ls as North Carolina Federal in Charlotte and First Federal in Raleigh. "You can make more money in stock transactions, but you also get more risk money," says Paul Stock, an executive at the North Carolina

BANKS BOOST THEIR ASSETS WITH A DESIRE TO ACQUIRE

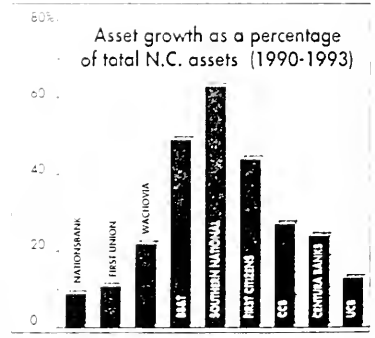
In four years, six midsized Tar Heel banks have bought $8.5 billion of S&L assets.



The midtier banks posted asset growth comparable to that of the Big Three thanks to an S&L buying frenzy. Here's the tally over the past four years:

		Assets (millions)
BB&T		
1990	FIRST FEDERAL OF PITT COUNTY, Greenville	$154
	FIRST FEDERAL OF THE CAROLINAS, High Point	235*
1991	ALBEMARLE SAVINGS AND LOAN, Elizabeth City	69*
	HOME SAVINGS AND LOAN, Durham	243*
1992	GATE CITY FEDERAL SAVINGS & LOAN, Greensboro	293
	PEOPLES FEDERAL SAVINGS BANK, Thomasville	105
1993	ASHEVILLE SAVINGS BANK	374
	CAROLINA SAVINGS BANK, Wilmington	151
	CITIZENS SAVINGS BANK, Mocksville	58
	CITIZENS SAVINGS BANK, Newton	275
	EDENTON SAVINGS AND LOAN, Edenton	40
	FIRST FINANCIAL SAVINGS BANK, Kinston	330
	1ST HOME FEDERAL, Greensboro†	185
	HOME SAVINGS BANK, Albemarle	149
	MUTUAL OF ROCKINGHAM COUNTY, Reidsville	81
	OLD STONE BANK OF N.C., High Point	661
	SCOTLAND SAVINGS BANK, Laurinburg	53
	SECURITY FEDERAL SAVINGS BANK, Durham	323
TOTAL		3,999
SOUTHERN NATIONAL BANCSHARES:		
1990	MUTUAL FEDERAL SAVINGS & LOAN, Elkin	146
	WESTERN CAROLINA SAVINGS & LOAN, Valdese	93
1992	FIRST SECURITY FEDERAL SAVINGS BANK, Pinehurst	63
	WORKMEN'S BANCORP, Mount Airy	268
1993	EAST COAST SAVINGS BANK, Goldsboro	255
	FEDFIRST BANCSHARES, Winston-Salem	389
	HOME FEDERAL SAVINGS BANK, Statesville	105
	REGENCY BANCSHARES, Hickory	263
TOTAL		1,582
FIRST CITIZENS BANCSHARES:		
1990	MUTUAL SAVINGS AND LOAN, Charlotte	$219*
1991	FIRST FEDERAL SAVINGS BANK, Hendersonville	457*
1993	CALDWELL SAVINGS BANK, Lenoir	50
	PIONEER SAVINGS BANK, Rocky Mount	439
TOTAL		1,165
CCB:		
1993	CITIZENS SAVINGS BANK, Lenoir	128
	1ST HOME FEDERAL, Greensboro†	450
	GRAHAM SAVINGS, Graham	110
	MUTUAL SAVINGS BANK, Lenoir	104
	SHELBY SAVINGS BANK, Shelby	100
TOTAL		892
CENTURA BANKS:		
1991	CITIZENS FEDERAL, Rutherfordton	77*
1992	ORANGE FEDERAL SAVINGS AND LOAN, Chapel Hill	94
1993	BREVARD FEDERAL SAVINGS & LOAN, Brevard	129
	CANTON SAVINGS BANK, Canton	59
	FIRST SAVINGS BANK, Forest City	57
	GRANITE SAVINGS BANK, Granite Falls	87
	ROBESON SAVINGS BANK, Lumberton	101
	WATAUGA SAVINGS BANK, Boone	120*
TOTAL		724
UNITED CAROLINA BANCSHARES:		
1993	HOME FEDERAL SAVINGS BANK OF EASTERN NORTH CAROLINA, Greenville	102
TOTAL		102
GRAND TOTAL		$8.46 billion

Deposits either temporarily or pending. Government-assisted transactions are excluded.
*S&L assets prior to exception-major restructuring after merger
†BB&T bought Winston-Salem operations; CCB bought Greensboro operations



Alliance of Community Financial Institutions. Given the age of many S&L directors, he adds, "the last thing they want to do is risk everything they've got to go out and buy S&L stock."

Granite Savings' prospectus notes, "An independent stock conversion was considered by the Board of Directors but was dismissed as a viable alternative because of concern that the asset size of the Savings Bank would severely limit the size of such a stock offering and thereby limit its liquidity and increase investment risk to unacceptable levels."

Many mutual executives are also deathly afraid of higher interest rates, which could wipe out their profit margins. "The yield curve is making it so that thrifts are making money right now, but if interest rates shift very much, it could get very costly for them," says Cecil Sewell, Centura's senior executive vice president. Then there's the difficulty some small S&Ls have in attracting good managers. That was an issue at Mutual Savings in Lenoir, whose board members range in age from 62 to 83. "They couldn't get a managing officer who they believed could take them forward as a stock institution," Raxter notes.

But what about the abundance of talented bankers, squeezed out by consolidations, who are looking for work? And why should an S&L executive be richly rewarded for not preparing a successor? "I consider succession a fiduciary responsibility," says the president of a thriving mutual in North Carolina, who asked to remain anonymous. "But it takes more pee-pee and vinegar to compete than many of these boards have."

Clearly, merger-conversions make sense for tiny thrifts that don't warrant stock sales — for example, BB&T's deal with $40 million-asset Edenton Savings & Loan. But it's the merger-conversions of healthy institutions such as Gate City Federal in Greensboro ($493 million in assets) or Asheville Savings ($374 million) that spark

North Carolina's largest thrifts

(figures as of March 31, 1993)

1993 rank	1992 rank		Assets (millions)	Total loans (millions)	Return on avg. assets	Nonperforming loans*	Capital/ assets*
1	3	RALEIGH FEDERAL	$729	$534	0.76%	1.1%	8.42%
2	6	PIEDMONT FEDERAL, Winston-Salem	606	392	1.44	0.4	12.65
3	5	HOME FEDERAL, Charlotte	598	509	1.22	3.8	9.84
4	2	FIRST AMERICAN FEDERAL, Greensboro	443	139	(2.54)	8.7	(10.77)
5	10	FIRST FEDERAL, Charlotte[1]	359	231	0.80	2.9	7.19
6	15	COOPERATIVE BANK FOR SAVINGS, Wilmington[2]	308	206	1.20	0.1	5.65
7	17	FIRST SOUTHERN, Asheboro[3]	283	196	0.73	1.6	8.95
8	18	CITIZENS, Newton[4]	268	210	1.70	0.5	7.80
9	16	UNITED FEDERAL, Rocky Mount	260	122	0.85	1.9	5.80
10	20	CLYDE, Clyde[5]	256	179	1.46	0.9	9.78
11	22	AMERICAN COMMERCIAL, Monroe[6]	253	197	0.62	2.0	6.35
12	21	EAST COAST, Goldsboro[7]	252	221	1.83	1.2	8.94
13	23	OMNIBANK, Salisbury[8]	227	181	1.72	0.6	13.95
14	24	CITIZENS, Concord[9]	223	153	1.30	0.4	10.10
15	26	FIRST FEDERAL OF MOORE COUNTY, Southern Pines	223	138	1.71	0.3	11.72
16	19	ESSEX, Elizabeth City	215	160	(1.12)	2.7	1.39
17	25	FINANCIAL FIRST FEDERAL, Burlington	209	153	0.75	0.1	7.44
18	29	MACON, Franklin[10]	167	141	1.28	1.5	8.65
19	28	HOME FEDERAL, Fayetteville	162	115	1.124	0.3	11.15
20	24	CITIZENS, Salisbury	154	117	1.28	0.1	5.75

Notes: * Nonperforming loans as a percentage of gross loans. * Core capital as a percentage of adjusted total assets.
(1) First American has been taken over by FTC. (2) First Federal of Charlotte is owned by Fortified Communities of Arkansas. (3) Chartered as savings bank. (4) Security Capital is the holding company for Omnibank and Citizens, Concord.
In the past year: BB&T acquired Old Stone Bank of N.C. of High Point, No. 4 last year; No. 7 Gate City of Greensboro, No. 12 Asheville, No. 13 First Financial of Kinston, No. 14 Security Federal of Durham, No. 18 Citizens of Newton and No. 30 Carolina of Wilmington. Southern National acquired No. 11 First Federal of Winston-Salem and No. 27 First Savings of Hickory. No. 1 Greensboro-based 1st Home Federal's assets were split between CCB and BB&T. Alabama-based SouthTrust acquired No. 8 CK Federal of Concord. First Citizens acquired No. 9 Pioneer of Rocky Mount.
Sources: Sheshunoff Information Services Inc. and the SBLA

controversy. "Gate City converted at 50% of book value," stockbroker Urquhardt says. "Based on other S&Ls, they would now be trading for at least 120% of book. That was an obscene deal." In fairness, Gate City depositors who bought BB&T stock have done very well because of its sharp appreciation in recent years.

At Asheville Savings, President John Dickson says the board "stepped back and asked if there would be a place for us in the future. We concluded that we would have to evolve into a community bank, which would be extremely hard for us to do." BB&T is acquiring the thrift.

How risky is it for an S&L to convert to stock? Much of the media focus has been on the nine Tar Heel thrifts taken over by Resolution Trust Corp. and a few other crippled institutions like 1st Home Federal in Greensboro and Pioneer Savings Bank in Rocky Mount.

But more than 12 others in North Carolina sailed through without capsizing. After investing for himself or clients in nearly 300 S&Ls nationwide that have made the mutual-to-stock conversion during the past eight years, Urquhardt says he has yet to take a loss on a single deal. "Orange Federal in Chapel Hill was probably the closest I've come to getting burned," he says. "They converted at $7 or $8 and went down to $2 before coming back." Centura acquired the thrift Dec. 31 for $12.3 million — $20.25 a share.

The key figure behind this feeding frenzy of thrifts in North Carolina is John Allison Jr. BB&T's savvy CEO. While NationsBank, First Union and Wachovia worked on big out-of-state mergers, Allison spent the past four years ramming through the state's S&L industry like a one-man wrecking ball. Early on, BB&T decided to focus on healthy thrifts. "Everyone said the thrifts were terrible, but we knew that most thrifts were very healthy," he says. "When we started this, no one was very interested in the S&Ls."

When its announced deals are completed next year, BB&T will have total assets of about $9 billion, and Allison thinks his North Carolina branch system will be on par with those of the Big Three banks. By then, the 18 acquired S&Ls will account for more than a third of BB&T's total assets.

"John Allison understood in 1989 that billions of dollars in assets would be moving from thrifts to banks in North Carolina in the next few years," says Sam Harris, president of The Meritas Group in Chapel Hill, consultants to Granite Savings and dozens of other state thrifts. "Many other bankers didn't want to take the time to understand this process, but he got the lead. He's called on every thrift of over $50 million and done it personally.

"Now the others are very good at matching John. But I admire him because it took a great deal of astuteness on his part."

From his spacious seventh-floor office in downtown Wilson, Allison defends merger-conversions with cool clarity. BB&T doesn't get more than a 15% break compared with pure stock deals, which he says is fair given the added benefits employees and communities receive. (Critics such as Hawkins say it is more like a 30% to 50% break.)

"These thrift guys could have done stock deals, but they knew that a handful of institutional investors would have won out," Allison says. "These [thrift CEOs] are the good guys who saved the taxpayers a lot of money by not being part of the bailout."

State law doesn't require philanthropic contributions, but such donations have become routine. Allison says they reflect the S&L directors' commitment to their communities, noting that $500,000 goes a long way in smaller towns. For example, CCB Savings Bank of Lenoir, the former Mutual Savings, is endowing a director's position to promote development of low-income and senior-citizen housing in Caldwell County.

"These CEOs and directors are getting a bad rap," Centura's Sewell says. "I promise you that most of these boards are totally sincere in their interest to do what's best for their communities and their employees."

Hawkins is more cynical: "These [S&L executives and directors] get some glowing deals, and then they try to feel not too guilty about it and try to save some face with their communities through these gifts."

Harris disagrees. "People who object to merger-conversions," he says, "are speculators who put $1,000 in an S&L in hopes that the S&L will convert to stock, at which time they will have the right to buy as much as they can. The people who deserve the rewards are those who built the institution by putting $10,000 in there in 1962, not the Johnny-come-lately types." Many mutuals in North Carolina have solved that problem, however, by not accepting deposits from people who don't live within their markets.

Among those serious savings and loan investors are three well-connected businessmen: Charlotteans Charles and Ed Shelton and their colleague, Hugh McColl III, son of NationsBank's CEO. The press-shy Sheltons, who are among Gov. Jim Hunt's top fund-raisers, won't comment, nor will McColl.

But several thrift and bank executives say that the Sheltons have done lots of ranting to powers-that-be about the inequities

of merger-conversions. In particular, they were upset about Shelby Savings, where they deposited money, then tried to persuade the thrift's board to convert to stock rather than merge with CCB. Jackson Steele, a Charlotte lawyer who has led opposition to that merger, won't say whether he represents the Sheltons.

State Banking Commissioner Bill Graham, who has no authority over S&Ls or savings banks, isn't afraid to name names. "The Sheltons, instead of making $1 million like they did in Winston-Salem [in the FedFirst] deal, are getting left out in some of these merger-conversions. And so they are claiming that they got screwed," he says. You can't blame them for trying, he says, even though the law permitting merger-conversions is crystal clear.

Local opposition, not the Sheltons, forced Shelby Savings' board to cave in. A key opponent was funeral-home director Jack Palmer, who was on the board from 1963 to 1988. "The directors should receive no more than the depositors," he says. The CCB deal valued the thrift at $13 million, about $5 million less than Southern National is paying for Home Federal in Statesville, which is nearly identical in size and capital.

Shelby Savings CEO Whisnant predicts local residents will wind up acquiring less than 25% of the stock if it is sold to depositors. "We feel that what's important is that this institution stay here in the community," he says. Responds Palmer: "Who does he think will own the stock if CCB buys it?"

Graham is ambivalent about such mergers. "The executives of the remaining S&Ls are smart in that they stayed home and didn't lend money on nursing homes in Denver," he says. "Now these banks are giving that S&L president a nice deal and a new title and telling him, 'Please don't come to work too often.'

"But the question is, 'Who gets hurt?'" Graham adds. "I still don't feel like I know the answer to that."

Who gets hurt, answers Ron Hawkins, are depositors unable to buy stock. "They are being denied the right to participate in this sale, while the officers and directors get the benefits," he says. So here's the dilemma facing CEOs and boards at most of the 60-plus mutual thrifts still operating in North Carolina: Do we hang tough, convert to stock, fight the banks and look for a buyout down the road? Or should we accept a bank's offer for a merger-conversion?

Most experts predict few will take the independent course. Paul Stock at the Alliance of Community Financial Institutions expects North Carolina to have no more than 5 thrifts five years from now.

The prime mutuals remaining are Home Federal in Charlotte ($595 million in assets) and Piedmont Federal ($606 million) in Winston-Salem, two robust thrifts that say they want to remain independent. Both remain regulated by the OTS, making it harder for CEOs Joe King in Charlotte and Nick Mitchell in Winston-Salem to strap on Bill Smith-style golden parachutes. Given their substantial net worth, $57 million at Home Federal and $74 million at Piedmont Federal, there would be a ruckus if their boards tried to push through a merger-conversion.

Then again, in the twilight of the S&L industry, anything can happen. ■

STATEMENT OF CARY ALLRED
BEFORE THE HOUSE BANKING COMMITTEE
January 20, 1994

My name is Cary Allred. I am a depositor at Graham Savings Bank in Graham, N.C. I am a resident of Alamance County, the home county of Graham Savings Bank.

What we have in North Carolina is a legalized formula to abscond with the assets of a mutual savings bank.

The first step is to change a mutual savings bank or mutual savings and loan from federal charter to state charter to avoid more restrictive federal supervision.

The second step is for mutual savings institution management to solicit offers from hungry-for-growth regional bankers who are willing to make an "offer" to the mutual savings institution's Board of Directors in the form of free stock grants to officers and directors worth 15% of the value of the institution's net worth, not to mention salary increases, lucrative retirement benefits, stock option rights, and other inducements too numerous to describe. In return, the Board of Directors is to recommend to the depositors, who are the legal owners of the institution, a simultaneous conversion of the institution and acquisition of all the assets of the savings institution by the acquiring bank. Forbes Magazine calls this the merger-conversion game. Sometimes a few crumbs are offered to the local communities in the form of so-called charitable gifts in order for the transaction to appear altruistic.

After the acquiring bank and the Board of Directors of the savings institution reach agreement on the transaction, the savings institution then publishes a small 4 inch one column notice of conversion in a local newspaper at a time when depositors may not see such notice. The notice gives only rudimentary information and provides no explanation of the ramification that members (depositors) will lose their ownership in the mutual savings institution at the time of conversion/acquisition. Yet, the members are given only ten days to respond in writing to the administrator in Raleigh.

After such notice is published, but unseen by most members, a proxy statement is issued about thirty days prior to a so-called special meeting of members who, in the interim, may, in my experience, be led to believe they have no ownership rights or interest in their savings institution by advertising and statements by attorneys for the bank or others.

Although member-depositors are the true owners of the savings institution by North Carolina law, according to the North Carolina Savings Institutions Division Administrator, they are prohibited from objecting to the conversion and acquisition if they did not respond in writing to the small aforementioned so-called newspaper notice.

The depositors are at an overwhelming disadvantage to comprehend, communicate, organize and adequately respond to a generally incomprehensible proxy statement which tells them general proxies will be cast in favor of the proposed

simultaneous conversion/acquisition. Depositors must use their own personal resources and money to oppose the proposed merger/conversion while the savings institutions' Board of Directors uses the assets of the mutual savings institution to advertise, finance, promote, defend and underwrite the proposed scheme. In addition, the Board of Directors use general proxies which, through the years, have been garnered from unsuspecting depositors, to vote in favor of the transaction. Those depositors may have no inkling that when they signed a general proxy they allowed themselves the potential of being robbed of their ownership interest in their mutual savings institution.

If the management and Board of Directors of the savings institution and the acquiring bank succeed in their efforts, the only persons who gain from the transaction are the Board of Directors and management of the savings institution, who gain monumentally, as I have stated, and the acquiring bank which generally obtains solid assets of the savings institution for a third or less of their true value. I see no socially acceptable reason for allowing these untoward gains by the officers and directors and by the acquiring bank, to the exclusion of depositors and others who have assisted in building the bank. This is one reason that I feel the proposed Congressional statute is insufficient.

True, it does regulate the extent of the greed which may motivate these transactions by placing the institution under federal regulations, but the proposed statute, as I read it,

does nothing to assist depositors in sharing in the benefits. And it still allows extensive benefits to insiders and windfalls to the acquiring banks, although to a lesser extent under federal regulations.

One of the problems in North Carolina, I believe, arises from the fact that the regulatory body for these transactions, the North Carolina Savings Institutions Division, through its Administrator, has exhibited an unwillingness to uphold the rights of depositors in any situation where they conflict with the management of the savings institution or the acquiring banks. This is positively evidenced by the failure of the Administrator to do his duty under the North Carolina statute which allows these simultaneous conversion/acquisitions to occur. For example, North Carolina General Statute 54C-33 specifically provides that in order for the Administrator to approve a plan of conversion of a mutual to a stock savings bank it must appear that "the conversion will be fair and equitable to the members of the savings bank and no other person whether member, employee, or otherwise, will receive any inequitable gain or advantage by reason of the conversion." Again, G.S. 54C-195(c)(v) provides that when a holding company simultaneously acquires the shares of a savings bank and the savings bank converts to the stock form of ownership "the plan of reorganization must be fair and equitable to all members of the savings bank." In my experience, the Administrator gives no consideration to questions of

fairness. Counsel for the Administrator, in my presence, candidly admitted that the Administrator doesn't even consider fairness and equity in this situation. Counsel for the Administrator also made the statement to my attorney, not in my presence, that the Administrator views these transactions as if management of the savings institutions were its sole proprietors. This is clearly contrary to North Carolina law, but consistent with what he has been allowing to happen.

It appears to me that we in North Carolina have been reduced to a government of men rather than of law. Recently, the Administrator's office rendered an opinion that I and a fellow depositor in Graham Savings Bank, Maurice Koury, were not aggrieved parties and did not even have standing to challenge the transaction by which Graham Savings Bank was to be taken over CCB. My affidavit, which I am submitting with this statement, points out a number of other incidents which I experienced in dealing with the office of the Administrator which deprived me and the other depositors of due process of law under the U. S. and North Carolina Constitutions. For example, in the case of Graham Savings Bank the Administrator allowed management of Graham Savings to amend its plan of conversion and acquisition less than 24 hours before the vote on the plan was to be taken, so that management could solicit additional proxies to assure passage of the proposal. This was clearly contrary to all the law and regulations.

I also point out that officers and directors of a savings institution are subject to the provisions of G.S. 54C-103 which provides that they are fiduciaries to the savings bank and its members or stockholders, and to the provisions of G.S. 54C-104 which provides that the officers and directors cannot put themselves in a position which creates, or could appear to create, a conflict of interest having adverse effects on the interests of the members of the bank.

To give teeth to these statutory provisions a regulation from the North Carolina Administrative Code, 16E.0103(b) specifically provides, "A director shall not vote on any matter in which he has a personal or financial interest."

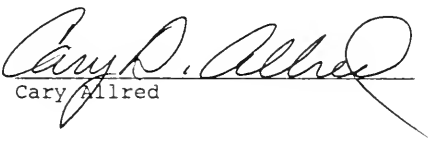
This means to me that, at a minimum, the members of any board of directors, who are to receive extensive benefits promised by the acquiring bank, should not vote on whether or not to recommend to the depositors acceptance of an acquiring bank's offer. The North Carolina Administrator has never purported to enforce this regulation.

Officers and directors of a mutual savings institution should receive nothing for free except as provided to all other owner-depositors and they should not be allowed to transfer the assets of a mutual savings institution by the use of general proxies in exchange for a pay-off. They should not be allowed to transfer the assets of a mutual savings institution for less than fair market value by use of general proxies, but only through specific

proxies cast for that purpose by the members. The proceeds of the merger/conversion should be divided among depositors who, by law in North Carolina, I remind you once again, are the owners of a mutual savings bank.

I am filing with my statement a sworn affidavit which has been filed in North Carolina Superior Court attesting to the actions that occurred in the Graham Savings Bank merger/conversion scheme.

Thank you.



Cary Allred

NORTH CAROLINA DEPARTMENT OF COMMERCE
SAVINGS INSTITUTION DIVISION
SAVINGS INSTITUTION COMMISSION

IN THE MATTER OF GRAHAM SAVINGS BANK, SSB	))	AFFIDAVIT OF CARY D. ALLRED

Cary D. Allred, being first duly sworn, deposes and says:

1. The allegations of petitioners' Request for Public Hearing, and amendments thereto, are, to the best of my knowledge and upon information and belief, true and correct.

2. Without attempting to cover all matters and things which may be relevant to petitioners' Request for Public Hearing, the undersigned submits the following as additions to and in support of the Request for Public Hearing as amended on behalf of himself and Maurice Koury who have been working together on this matter;

3. I understand that the banks have contended that the Request for Public Hearing by Mr. Koury and me were not timely by reason of a purported one column 4 inch advertisement on July 3, 1993, in a local newspaper. I did not see any such advertisement, and Mr. Koury informs me that neither did he.

4. I am informed by my attorneys that attorneys for Graham Savings Bank have represented in a letter of November 8, 1993, to counsel for the North Carolina Savings Institutions Division that "except for challenging the use of general proxies, neither depositor [Koury or Allred] submitted to the Administrator any objection, written or otherwise, to approval of the proposed conversion." Ward and Smith letter, p. 15. Again, at page 16, the same attorneys stated, "Neither depositor submitted to the Administrator at any time before October 1, 1993, any objection written or otherwise ..." These and similar statements are flatly untrue. The chronology prepared by Mr. David Worth for use at his settlement conference with the attorneys for Mr. Koury and me demonstrates numerous contacts by me with the Administrator's counsel throughout the course of these proceedings, beginning with my written correspondence to Mr. Worth on August 31, 1993, complaining of the proposed use of general proxies. Thereafter, I had numerous conversations with Mr. Worth in which I complained that no steps in the transaction should be allowed for various reasons, including but not limited to, its basic unfairness to the members of Graham Savings, its accomplishment through past and future votes by the Board of Directors in breach of their fiduciary duties and the proposed vote by these same directors with conflicts of interest individually and through the use of

general proxies at the scheduled September 21, 1993, meeting. Some of my complaints to Mr. Worth are reflected in my communications to members of the institution, and Mr. Worth, as attorney for the Administrator, regulated what I was allowed to say in newspaper advertisements and in a mailing to members, as illustrated in copies of billings to my telephone account by the telephone company, attached hereto as EXHIBIT A. It shows 29 calls to the Administrator's telephone number in Raleigh, 919-850-2888, between August 31, 1993, and October 1, 1993, and 17 telefaxes to the Administrator's facsimile number, 288-2853, in the same time frame. One of these calls was on September 21, 1993, at approximately 8:48 a.m., about which I will make statements later in this affidavit. In addition to my written and verbal objections to the Administrator from time to time I requested various of the Board members to withdraw the proposal for conversion and acquisition as they had a right to do under the proxy statement. No certain response was ever provided to these requests.

I understand further that attorneys for the bank have contended that Mr. Koury and I were required to object in advance to any actions taken by the Administrator in carrying forward this transaction. I did object in advance, as I previously indicated, to the entire transaction and the steps necessary to accomplish it when I read its terms in the proxy

statement. But as for such publications by the bank as its proxy statement, prospectus and its newspaper advertisements I had no advance knowledge that such were even before the Administrator for approval. My recollection is that an article appeared in the Alamance News of August 12, 1993, delivered August 13, to the effect that certain documents had been filed by the bank with the Administrator. However, I did not see the article on the 13th, and in any event the Administrator's settlement conference chronology indicates he approved the proxy statement and prospectus on August 13. This did not provide me with any time to review the proxy statement prior to his approval. It was mailed August 19, according to the chronology.

5. As alleged in the Second Amended Request for Public Hearing, I delivered for mailing on Friday, September 17, 1993, a letter to members opposing the conversion and acquisition sought by management of Graham Savings Bank and Central Carolina Bank.

6. About 9 a.m. on the morning of September 20, 1993, I went to Graham Savings Bank with authority from a member of the bank, Mr. Robert Squires, to pick up his general proxy so that it could not be voted in favor of the transaction. I was sent to the second floor of the bank to pick up Mr. Squires' proxy. There, a woman who identified herself as with Meritas, retrieved Mr. Squires' proxy and handed it to me. There were then other persons in the bank, including

Mrs. Willie Mae Currin, to retrieve general or special proxies which could be voted in favor of the conversion and acquisition. While I waited to get back Mr. Squires' proxy, Mr. George Self, a public relations person employed by the banks, approached me and accused me of motivating Mrs. Currin to write a letter to The Alamance News opposing the transaction. As a result of this, I asked Mrs. Currin to make clear to Mr. Self that her opposition was her own, which she did. Later, I met Mr. Forrest Hall, a director of Graham Savings Bank on the premises. I requested him to call off the transaction just as the transaction in Shelby, N.C., had been called off earlier. Thereafter, I left the bank for the morning.

7. At about 3:00 to 3:30 on the afternoon of September 20 I received a telephone call from Mr. Anthony Gaeta, an attorney with the firm of Ward and Smith. Mr. Gaeta requested that I come to Graham Savings Bank. I asked him if I needed to bring a lawyer. He said that would not be necessary and that I would be pleasantly surprised. In compliance with Mr. Gaeta's request I arrived at Graham Savings Bank between 3:30 and 4:00 on the afternoon of September 20, 1993. When I asked to see Mr. Gaeta, he came into the lobby and invited me into Mr. Andy Motsinger's office. Mr. Motsinger was not present, but already present was Mr. Richard Furr, Vice President of Operations for CCB, and shortly thereafter Mr. Forrest Hall arrived. Mr. Self

was then outside Mr. Motsinger's office using a secretary's telephone. Mr. Gaeta said, in effect, I think we have something which will please you. Mr. Gaeta then gave me a copy of a document entitled "Proposal: Graham Savings Bank, SSB," attached hereto as EXHIBIT B, and he recited its terms, stating in effect, we are going to pay the additional sums as described in the proposal only on the funds in the accounts as of July 31, 1993, because we don't want excessive money coming into the bank just to get extra interest on accounts. He explained that the funds to carry out the proposal were to come from grants previously specified for certain officers and directors and said that they planned to expand the number of employees, then unnamed, who would also receive benefits. Mr. Gaeta stated that they would like for me to "come on board and support the proposal" and he said that I would be given public credit for the increased amounts to be received by the members of Graham Savings Bank. He wanted to make a public announcement of the increase, saying that I would get credit in the public announcement. I told Mr. Gaeta that I did not support the proposal and that in any public statement he was not authorized to say that I supported it.

8. During the conversation I stated that I thought that the minimum which ought to go to the members of the bank and be divided pro rata among them was $10,000,000. Mr. Furr stated that CCB had paid all it was going to pay, and that "this is not a poker game."

9. In the course of the conversation Mr. Forrest Hall stated to me that I had done a wonderful job and that no nobody else in the county could have done what I had done in this matter. He also stated that if I would come on out and support this proposal that I would get full credit for bringing the money into the accounts. Mr. Hall said, "You'll be a hero. You can get elected to the state legislature. You can get elected to the state Senate," to which I replied, "I have already been there."

10. After I refused to endorse the proposal, the meeting broke up. The meeting was over about 4:30.

11. I now know that the transaction, which apparently was approved by the directors of Graham Savings Bank after the meeting I have described, involved an initial deposit to the members' accounts of 1 1/4% rather than 1% as shown on EXHIBIT B. I do not know when the Board met to make this change, but based upon documents I have seen I know that there was no telefax purporting to approve it by the Administrator's counsel until the morning of September 21, 1993, the same day as the scheduled meeting of members of Graham Savings Bank. A news account in The Alamance News of September 23, 1993, reports that the Graham Savings Board was in session even as the meeting with me was occurring. It was obviously awaiting my response before increasing the proposed deposits to members. The Alamance News reported that the Board met from 1:00 p.m. to 7:00 p.m. on September 20. I also know from talking with various persons who were

solicited, and from news accounts, that management of Graham Savings Bank publicized the change late on September 20 and used it the same day and on September 21 to seek persons to change their proxies from votes against the transaction to votes in favor and also to seek persons who had not already voted to vote in favor of the transaction. This occurred in spite of the fact that nothing purporting to be the Administrator's approval was received until the next day. See The Alamance News, cited above, and the Burlington Times, News, September 21, 1993.

12. As my attached telephone records show, on the morning of September 21, 1993, at 8:48 a.m. I called the Administrator's office and talked with Mr. Worth for 7.6 minutes strenuously objecting to any permission being given to the bank to make a last minute change as described above. My telephone records also show that at 9:07 I sent a facsimile to Mr. Worth in which I undoubtedly enclosed a copy of the change which had been proposed to me about 4:00 p.m. on September 20, 1993. A facsimile record from the office of the Administrator indicates that the law office of Ward and Smith sent a facsimile of the final version of the proposed change to Mr. Worth at 8:42 a.m. on September 21, 1993, and that Mr. Worth sent a return facsimile sometime on September 21, 1993, believed to be at 9:47 a.m., purportedly approving the change, only 59 minutes after my objection. A copy of these documents furnished by the Savings Institution Division is attached hereto as EXHIBIT C.

My telephone records, EXHIBIT A hereto, also record a 9.7 minute conversation between me and Mr. Worth on September 22, 1993. My recollection is that I then continued to express my concern over the last minute change, and also stated my continuing dismay, which had earlier frequently expressed to Mr. Worth, that advertisements had been run by the bank stating that the bank's members were not its owners, in direct contravention of G.S. 54C-100. I believe there were other telephone conversations between Mr. Worth and me than those shown on the attached records, since I am sure that Mr. Worth may well have returned calls from me from time to time.

13. Clear inferences arise from these facts that without the last minute amendment to the Plan of Conversion and Acquisition the transaction would not have passed and that the lengthy Board meeting on September 20 was called to enact the amendment because management knew the conversion and acquisition was in trouble.

14. At the meeting of members held beginning at 4:00 on Tuesday, September 21, 1993, Maurice Koury and I appeared with our attorney and lodged various objections to the transaction being voted upon, including the last minute change and other objections relating to many of the matters set forth in our Second Amended Request for Public Hearing.

15. On Tuesday, September 28, 1993, I went with one of Mr. Koury's and my attorneys, Frederick L. Berry, Esq. to the

Administrator's office in Raleigh. There, we talked to Mr. David Worth, attorney for the Administrator. We voiced our objections to the transaction and many of the reasons therefor, including but not limited to the use of general proxies, the last minute change, the misstatements or nondisclosures in the bank's published statements and the general overall inequities of the transaction. My attorney asked if the Administrator considers fairness and equity in this type situation, and Mr. Worth said that the Administrator doesn't consider the equities. We requested to be allowed to read the file to determine what documents we would need in order to file our opposition documents. Mr. Worth allowed us to review the file, except for one portion which he said was confidential. My attorney asked that certain of the documents be copied and sent to us and, after first stating that there would be a cost per page, Mr. Worth later agreed that the documents would be copied and sent to us at a charge of $20 per hour for the time of secretarial assistance in running the copies. It was agreed that the documents would be sent to us by Federal Express, using the Federal Express charge number of our attorneys' law firm.

16. Our attorney asked Mr. Worth as to what was the time table for submitting our opposition documents to the Commission. Mr. Worth indicated that he had understood the attorneys for the banks wanted to get their documents in by October 1, and that his office had to review the sufficiency of their filings. Thus, he said, it would be a week or so

before the Administrator would act upon the banks' filings. Therefore, he said that filing of our Request by the first of the following week would be timely and that he would consider it and render a written decision before the Administrator certified the completion of the conversion and acquisition. At no time did Mr. Worth intimate in any way that the Administrator would sign any document purportedly certifying the transaction on September 30, 1993, the same day the banks made some of the filings said to be required by the Administrator. I understand that the banks are now contending that sufficient approval by the Administrator was signed on September 30, 1993. If so, this was totally without any notice to us or our attorneys despite our understanding with counsel for the Administrator. It may be a matter of interest that September 30, 1993, is the same day that we were sent copies of the documents which my attorney had requested the previous Tuesday, September 28, 1993. Enclosed as EXHIBIT D is a copy of a document from Federal Express which verifies the date said documents were shipped. The Request for Public Hearing by Mr. Koury and myself was filed on Monday, October 4, 1993, the next working day from the receipt by my attorneys of the documents on October 1, 1993. (The other document shipments by Mr. Worth on October 5 and 6 shown on EXHIBIT D were pursuant to a telephone request by my attorneys for copies of all documents filed on September 30 and October 1.)

Cary D. Allred

Sworn to and subscribed before me this 19th day of November, 1993.

Margaret T. Bell
Notary Public

My commission expires: 1/1/95

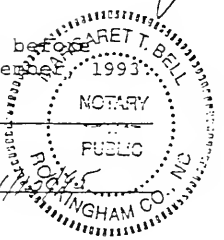


EXHIBIT A

Call Detail Report - Dial-1 Access

ECONOMED PHARMACEUTICALS I
4305-07 SARTIN RD
BURLINGTON NC 27217

CUSTOMER NUMBER 4V154186

DATE	TIME	NUMBER CALLED	PLACE CALLED	
08/25	10:01	919-836-1220	RALEIGH	NC
08/25	14:40	310-588-2266	DEER PARK	NY
09/01	09:01	919-836-1220	RALEIGH	NC
09/03	09:35	919-836-1220	RALEIGH	NC
09/03	10:57	919-836-1220	RALEIGH	NC
09/03	13:10	201-887-4440	WHIPPANY	NJ
09/08	09:53	919-850-2888	RALEIGH	NC
09/08	10:41	919-733-2737	RALEIGH	NC
09/08	12:58	201-887-4440	WHIPPANY	NJ
09/08	15:22	919-850-2888	RALEIGH	NC
09/09	13:53	804-977-1900	CHARLOTSVL	VA
09/09	10:19	919-830-1800	RALEIGH	NC
09/09	10:24	704-492-0975	SHELBY	NC
09/10	10:09	919-247-3052	NOREHEADCY	NC
09/10	13:26	704-482-0975	SHELBY	NC
09/10	15:23	704-372-5270	CHARLOTTE	NC
09/11	11:10	518-588-2256	DEER PARK	NY
09/14	10:18	704-492-0975	SHELBY	NC
09/14	10:52	704-338-5007	CHARLOTTE	NC
09/15	14:04	704-347-2340	CHARLOTTE	NC
09/15	14:14	919-850-2886	RALEIGH	NC
09/15	15:00	919-850-2888	RALEIGH	NC
09/15	23:17	704-482-1232	SHELBY	NC
09/16	09:11	919-850-2886	RALEIGH	NC
09/16	17:37	704-372-5270	CHARLOTTE	NC
09/17	23:22	704-555-1212	DIR ASST	NC
09/17	23:22	704-506-2999	CHARLOTTE	NC
09/20	11:47	704-372-5270	CHARLOTTE	NC
09/21	08:48	919-850-2888	RALEIGH	NC
09/21	10:31	919-828-3833	RALEIGH	NC

TOTAL CALLS FROM 919-229-1980 CALLS

EXHIBIT A

Call Detail Report - Dial-1 Access

ECONOMED PHARMACEUTICALS I
4305-07 SARTIN RD
BURLINGTON NC 27217

BILLING PERIOD 08/28/93 THROUGH 09/24/93

INVOICE NUMBER 77451041
INVOICE DATE 09/25/93
PAGE NUMBER 5

CUSTOMER NUMBER 4V154186

DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT
NUMBER CALLED FROM 919-220-1091							
08/25	10:19	909-460-3020	ONTARIO	CA	3.0	1	0.80
08/28	15:37	516-827-6000	MANHASSET	NY	1.1	1	0.28
08/28	18:03	203-532-2900	BYRAN	CT	0.9	1	0.31
08/28	18:28	704-249-8780	LEXINGTON	NC	1.8	1	0.32
08/27	12:18	818-837-8474	SOUTHHAVEN	MI	0.8	1	0.15
08/27	18:04	919-313-1053	WILMINGTON	NC	11.0	2	1.98
08/30	11:14	518-588-2268	DEER PARK	NY	1.8	1	0.46
08/31	10:07	919-725-3305	RALEIGH	NC	29.8	1	9.98
08/31	11:38	919-733-2924	RALEIGH	NC	1.4	1	0.28
08/31	13:03	919-838-1800	RALEIGH	NC	1.8	1	0.32
08/31	13:48	919-735-3018	RALEIGH	NC	7.3	1	1.48
08/31	12:58	919-850-2888	RALEIGH	NC	0.8	1	0.18
09/02	13:00	919-828-1320	RALEIGH	NC	0.8	1	0.18
09/02	15:09	919-969-4577	CHAPELHILL	NC	17.1	1	3.42
09/03	11:36	518-588-2268	DEER PARK	NY	3.4	1	0.82
09/04	12:17	804-977-1900	CHARLOTSVL	VA	5.4	2	0.82
09/08	09:54	704-482-0975	SHELBY	NC	3.3	1	0.60
09/09	11:59	919-838-1800	RALEIGH	NC	0.4	1	0.08
09/09	12:07	919-850-2888	RALEIGH	NC	2.4	1	0.48
09/10	10:35	501-273-8800	BENTONVL	AR	1.0	1	0.26
09/10	10:36	704-788-8753	CONCORD	NC	13.7	1	2.74
09/10	11:27	919-850-2888	RALEIGH	NC	6.2	1	1.24
09/10	12:00	919-850-2588	RALEIGH	NC	8.1	1	1.22
09/10	14:11	919-850-2888	RALEIGH	NC	0.4	1	0.08
09/10	18:21	704-555-1212	DIR ASST	NC	0.8		0.49
09/10	15:23	704-338-5000	CHARLOTTE	NC	1.8	1	0.32
09/10	17:12	919-733-0580	RALEIGH	NC	19.0	2	3.41
09/13	10:50	919-838-1220	RALEIGH	NC	1.8	1	0.32
09/13	15:01	704-338-8007	CHARLOTTE	NC	2.4	1	0.48
09/14	10:48	803-283-8187	COLUMBIA	SC	9.5	1	1.59

DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT
09/15	11:14	919-850-2680	RALEIGH	NC	1.8	1	0.36
09/15	14:18	704-595-1212	DIR ASST	NC	0.4		0.45
09/15	14:19	704-372-5270	CHARLOTTE	NC	5.9	1	1.16
09/15	16:32	919-687-8000	CHAPELHILL	NC	2.8	1	0.58
09/15	17:09	704-372-5270	CHARLOTTE	NC	2.3	2	0.41
09/15	17:18	919-850-2888	RALEIGH	NC	0.7	2	0.13
09/15	17:33	919-890-2888	RALEIGH	NC	10.1	2	1.81
09/15	19:21	919-933-8222	CHAPELHILL	NC	1.6	2	0.29
09/16	09:22	919-787-8880	RALEIGH	NC	15.0	1	3.00
09/20	12:51	919-986-4139	CHAPELHILL	NC	0.5	1	0.10
09/20	14:01	919-823-4745	RALEIGH	NC	52.7	1	10.54
09/20	17:42	704-482-0975	SHELBY	NC	2.1	2	0.33
09/20	17:45	704-482-5322	SHELBY	NC	14.5	2	2.60
09/22	14:10	704-871-5824	STATESVL	NC	2.9	1	0.46
09/23	10:15	804-582-4745	LYNCHBURG	VA	1.5	1	0.33
09/24	09:35	518-588-2286	DEER PARK	NY	3.8	1	0.92
09/24	11:34	919-692-5555	SOUTHERINS	NC	0.7	1	0.14
09/24	12:10	201-767-1700	CLOSTER	NJ	2.7	1	0.70
09/24	15:27	919-692-5555	SOUTHERINS	NC	0.1	1	0.02
09/24	18:04	317-823-6878	OAKLANDON	IN	1.7	1	0.44

TOTAL CALLS FROM 919-220-1091 CALLS: 80 MINUTES: 274.5 AMOUNT: $ 55.80

Call Detail Report - Dial-1 Access

ECONOMED PHARMACEUTICALS I
4305 OF SARTIN RD
BURLINGTON NC 27217

BILLING PERIOD 08/25/03 THROUGH 09/24/03

INVOICE NUMBER 77451041
INVOICE DATE 09/25/03
PAGE NUMBER 5

CUSTOMER NUMBER AV154166

DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT	DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT
NUMBER CALLED FROM 919-220-1091															
08/25	10:19	909-460-3020	ONTARIO	CA	3.0	1	0.80	09/15	11:14	919-850-2888	RALEIGH	NC	1.0	1	0.36
08/26	15:33	516-627-6000	MANHASSET	NY	1.1	1	0.29	09/15	14:18	704-555-1212	DIR ASST	NC	0.4		0.48
08/26	16:03	203-532-2900	BYRAM	CT	0.8	1	0.21	09/15	14:19	704-372-5270	CHARLOTTE	NC	5.9	1	1.18
08/26	16:20	704-249-0760	LEXINGTON	NC	1.6	1	0.32	09/15	16:33	919-967-8000	CHAPELHILL	NC	2.0	1	0.56
08/27	12:18	816-637-8474	SOUTHHAVEN	MI	0.6	1	0.16	09/15	17:06	704-372-5270	CHARLOTTE	NC	2.3	2	0.41
08/27	18:04	919-313-1053	WILMINGTON	NC	11.0	2	1.98	09/15	17:16	919-850-2888	RALEIGH	NC	0.7	2	0.13
08/30	11:14	516-586-2266	DEER PARK	NY	1.6	1	0.46	09/15	17:33	919-850-2888	RALEIGH	NC	10.1	2	1.81
08/31	10:07	919-733-3305	RALEIGH	NC	28.8	1	5.96	09/15	19:21	919-933-8222	CHAPELHILL	NC	1.6	2	0.29
08/31	11:36	919-733-3924	RALEIGH	NC	1.4	1	0.28	09/16	09:22	919-787-8080	RALEIGH	NC	15.0	1	3.00
08/31	13:03	919-835-1800	RALEIGH	NC	1.6	1	0.32	09/20	12:51	919-966-4129	CHAPELHILL	NC	0.5	1	0.10
08/31	13:48	919-733-3016	RALEIGH	NC	7.3	1	1.46	09/20	14:01	919-829-4745	RALEIGH	NC	52.7	1	10.54
08/31	13:58	919-850-2888	RALEIGH	NC	0.8	1	0.10	09/20	17:42	704-482-0975	SHELBY	NC	2.1	2	0.38
09/02	13:00	919-836-1220	RALEIGH	NC	0.8	1	0.16	09/20	17:48	704-482-6322	SHELBY	NC	14.5	2	2.60
09/02	15:09	919-968-4377	CHAPELHILL	NC	17.1	1	3.42	09/22	14:10	704-871-9824	STATESVL	NC	2.3	1	0.46
09/03	11:38	516-586-2266	DEER PARK	NY	2.4	1	0.62	09/22	18:16	804-582-4745	LYNCHBURG	VA	1.3	1	0.32
09/04	12:17	804-977-1600	CHARLOTSVL	VA	5.4	3	0.82	09/24	09:35	516-586-2288	DEER PARK	NY	3.6	1	0.93
09/08	09:54	704-482-0975	SHELBY	NC	3.3	1	0.66	09/24	11:34	919-692-5568	SOUTHEPINS	NC	0.7	1	0.14
09/09	11:59	919-836-1800	RALEIGH	NC	0.4	1	0.08	09/24	12:10	201-767-1700	CLOSTER	NJ	2.7	1	0.70
09/09	12:07	919-850-2888	RALEIGH	NC	2.4	1	0.48	09/24	15:27	919-692-5555	SOUTHEPINS	NC	0.1	1	0.02
09/10	10:35	501-273-8600	BENTONVL	AR	1.0	1	0.26	09/24	16:04	317-823-6878	OAKLANDON	IN	1.7	1	0.44
09/10	10:36	704-788-0253	CONCORD	NC	13.7	1	2.74								
09/10	11:27	919-850-2888	RALEIGH	NC	6.2	1	1.24								
09/10	12:00	919-850-2888	RALEIGH	NC	6.1	1	1.22								
09/10	14:11	919-850-2888	RALEIGH	NC	0.4	1	0.08								
09/10	16:21	704-555-1212	DIR ASST	NC	0.8		0.48								
09/10	16:23	704-338-5000	CHARLOTTE	NC	1.6	1	0.32								
09/10	17:12	919-733-0590	RALEIGH	NC	19.0	2	3.41								
09/13	10:50	919-836-1220	RALEIGH	NC	1.6	1	0.32								
09/13	15:01	704-338-5007	CHARLOTTE	NC	2.4	1	0.48								
09/14	10:48	803-253-6107	COLUMBIA	SC	6.5	1	1.59								

TOTAL CALLS FROM 919-220-1091 CALLS: 50 MINUTES: 274.6 AMOUNT: $ 55.03

Call Detail Report - Dial-1 Access

ECONOMED PHARMACEUTICALS I
4305 W SARITH RD
BURLINGTON NC 27217

BILLING PERIOD 08/25/93 THROUGH 09/24/93

INVOICE NUMBER 77451941
INVOICE DATE 09/25/93
PAGE NUMBER 6

CUSTOMER NUMBER 4V154166

DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT	DATE	TIME	NUMBER CALLED	PLACE CALLED		MIN-UTES	RATE KEY	PRE-DISCOUNT AMOUNT
NUMBER CALLED FROM 919-229-1980															
08/25	10 01	919-836-1220	RALEIGH	NC	1.0	1	0.20	09/21	11:25	919-966-4139	CHAPELHILL	NC	2.7	1	0.54
08/25	14 40	516-506-2266	DEER PARK	NY	5.5	1	1.42	09/22	11:53	919-850-2888	RALEIGH	NC	9.7	1	1.94
09/02	09 01	919 836-1220	RALEIGH	NC	9.0	1	1.80	09/22	12 26	317-823-6878	OAKLANDON	IN	1.2	1	0.31
09/03	09 36	919-836-1220	RALEIGH	NC	18.2	1	3.64	09/22	12 29	607-538-9124	HOBART	NY	1.0	1	0.26
09/03	10 57	919-836-1220	RALEIGH	NC	0.1	1	0.02	09/22	13:59	704-338-5007	CHARLOTTE	NC	0.2	1	0.04
09/03	13 10	201 887 4440	WHIPPANY	NJ	0.8	1	0.21	09/23	11 34	817-284-0429	FORT WORTH	TX	1.7	1	0.46
09/08	09 53	919-850 2888	RALEIGH	NC	26.5	1	5.30	09/23	12 26	317-623-6878	OAKLANDON	IN	0.8	1	0.21
09/08	10 41	919 733 2737	RALEIGH	NC	16.0	1	3.20	09/23	12 27	607-538-9124	HOBART	NY	1.0	1	0.26
09/08	12 58	201 887-4446	WHIPPANY	NJ	0.7	1	0.18	09/23	13 15	317-823-6878	OAKLANDON	IN	14.7	1	3.79
09/08	15 22	919-850 2888	RALEIGH	NC	26.4	1	5.28								
09/08	15 53	804 977 1600	CHARLOTSVL	VA	11.2	1	2.73								
09/09	10.19	919-836-1800	RALEIGH	NC	2.8	1	0.56								
09/09	10:24	704-482-0975	SHELBY	NC	27.9	1	5.58								
09/10	10 09	919-247-3002	MOREHEADCY	NC	10.1	1	2.02								
09/10	11 26	704-482-0975	SHELBY	NC	9.2	1	1.84								
09/10	15:23	704-372-5270	CHARLOTTE	NC	11.6	1	2.32								
09/11	11:10	516-506 2266	DEER PARK	NY	0.8	3	0.13								
09/14	10:18	704 482-0975	SHELBY	NC	1.4	1	0.28								
09/14	10 59	704 338-5007	CHARLOTTE	NC	13.7	1	2.74								
09/15	14:04	704-347-2340	CHARLOTTE	NC	9.1	1	1.82								
09/15	14 14	919-850-2888	RALEIGH	NC	0.2	1	0.04								
09/15	15 00	919 850-2888	RALEIGH	NC	29.3	1	5.86								
09/15	23 17	704-482 1202	SHELBY	NC	4 6	3	0.56								
09/16	09.11	919-850 2888	RALEIGH	NC	6 3	1	1.26								
09/16	17:37	704-372 5270	CHARLOTTE	NC	1.8	2	0.32								
09/17	23 22	704-555-1212	DIR ASST	NC	0 4		0.49								
09/17	23 22	704-596-2999	CHARLOTTE	NC	3 5	3	0.50								
09/20	11 47	704 372-5270	CHARLOTTE	NC	3.7	1	0.74								
09/21	08 49	919-850-2888	RALEIGH	NC	7 6	1	1.52								
09/21	10 31	919-828 2833	RALEIGH	NC	0.8	1	0.16								

TOTAL CALLS FROM 919-229-1980 CALLS: 38 MINUTES: 283.2 AMOUNT: $ 60.03

Prism Plus

000097726

Account Number: 919-227-3636 313 0368
Bill Date: Sep 17, 1993 6URL
Page 8

tailed Statement of Regulated Charges

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ace Called	Number Called	*Rate	Time	Min.	AMOUNT	TOTAL
HARLOTTE	NC 704 358-8363	BE	506PM	1	.21	
SHVILLE	TN 615 254-1565	AE	508PM	1	.15	
ATTNOOGA	TN 615 698-0519	AE	510PM	1	.15	
ELBY	NC 704 481-1495	BE	511PM	1	.22	
URHAM	NC 919 596-1453	BE	515PM	1	.19	
HOENIX	AZ 602 269-7468	AE	523PM	2	.30	
EER PARK	NY 516 586-2385	AD	1216PM	1	.23	
HARLOTTE	NC 704 588-7532	BD	345PM	1	.25	
SHEVILLE	NC 704 254-4875	BD	347PM	1	.30	
ENSACOLA	FL 904 477-3842	AE	512PM	1	.15	
EER PARK	NY 516 586-2385	AD	330PM	2	.46	
EW HAVEN	CT 203 397-8132	AD	336PM	1	.23	
OUTHHAVEN	MI 616 637-8410	AD	340PM	1	.23	
ANHASSET	NY 516 627-6093	AD	344PM	1	.23	
ANHASSET	NY 516 627-6369	AD	348PM	1	.23	
YRAM	CT 203 532-2980	AD	413PM	1	.23	
OUTHHAVEN	MI 616 637-8410	AD	1223PM	2	.46	
OODLAWN	MD 410 298-6343	AD	1227PM	3	.69	
ANSASCITY	MO 816 483-5432	AD	318PM	2	.46	
ANSASCITY	MO 816 483-5432	AD	338PM	2	.46	
RALEIGH	NC 919 850-2853	BD	427PM	3	.70	
RALEIGH	NC 919 850-2853	BD	431PM	2	.48	
RALEIGH	NC 919 850-2853	BD	450PM	1	.26	
RALEIGH	NC 919 850-2853	BD	452PM	2	.48	
NEW HAVEN	CT 203 397-8132	AD	331PM	2	.46	
PHOENIX	AZ 602 269-7468	AD	400PM	1	.24	
YAPHANK	NY 516 924-1731	AD	451PM	1	.23	
RALEIGH	NC 919 836-1507	BE	1202PM	1	.19	
RALEIGH	NC 919 850-2853	BE	612PM	1	.19	
RALEIGH	NC 919 850-2853	BD	1141AM	2	.48	
RALEIGH	NC 919 850-2853	BD	454PM	1	.25	
RALEIGH	NC 919 850-2853	BD	456PM	2	.48	

- See Back of Page

CP 010876

(continued)▶

Account Number: 919-227-3636 313 0368
Bill Date: Sep 17, 1993 BURL
Page 9

ailed Statement of Regulated Charges (continued)

alls (continued)

Place Called	Number Called	*Rate	Time	Min.	AMOUNT	TOTAL
RALEIGH	NC 919 850-2853	BD	200PM	3	.70	
RALEIGH	NC 919 850-2853	BD	1133AM	3	.70	
RALEIGH	NC 919 850-2853	BD	151PM	2	.48	
RALEIGH	NC 919 850-2853	BE	542PM	2	.36	
RALEIGH	NC 919 850-2853	BE	547PM	2	.36	
RALEIGH	NC 919 850-2853	BE	716PM	1	.19	
RALEIGH	NC 919 850-2853	BD	1028AM	1	.26	
		Subtotal				13.36

For Itemized Calls 13.36

	AMOUNT	TOTAL
l Tax	.40	
Tax-6.5%	.51	
Subtotal		.91
urrent Regulated Charges		14.27

rs for AT&T

uestions 1-800-222-0300

led - See Back of Page CP 010876

Proposal: Graham Savings Bank, SSB

1. The 15% stock grants will be reduced to 7.5% and a total of nine non-Director employees will be included as recipients. The amount of reductions will come from the allocated shares of the directors; no reductions will come from the share allocated to the non-director officers.

2. All depositors as of July 31, 1993, will be paid an interest rate increase of one additional percentage point on the balance of each deposit account at that date. This will be paid in one lump sum immediately after the closing by credit to each account. During the one year following the closing (currently scheduled for a date in October), an additional one percentage point will be paid on the one-year anniversary date of the closing calculated on the average daily balance for all accounts existing on the closing date not to exceed the balance as of July 31, 1993.

North Carolina
Savings Institutions Division

James B. Hunt, Jr.
Governor

Robert A. Jacobsen
Administrator

FACSIMILE COVER SHEET

PLEASE DELIVER THIS TRANSMITTAL TO THE ADDRESSEE AS SOON AS POSSIBLE

____ URGENT ____ ROUTINE

TO: Tony Gaeta Fax Telephone no. 919 836 1507

FROM: David C. Worth, Jr.

DATE: September 21, 1993

Number of pages to be transmitted including this cover 1

In the event of transmission difficulties, please call me at 919-850-2888.

MESSAGE: Tony

We have reviewed the proposed changes in the acquisition agreement between Graham Savings Bank and CCB which result in the decrease in benefits to be received by the outside directors and certain senior management officials of Graham Savings Bank with a corresponding increase in benefits to be received by all depositors of Graham who meet certain qualifications. Inasmuch as these changes do not appear to reduce the benefits or operate to the detriment of those members who are being asked to approve the plan of conversion/acquisition, it would appear that Graham could continue to proceed to hold the special meeting scheduled to be held this afternoon to consider the matter. Please confirm that each of the directors and senior management officials of Graham Savings Bank who are adversely affected by the proposed changes have executed their consent to the changes and such changes have been agreed to by CCB, the acquiror.

Further, please confirm that these changes will not adversely affect the appraisal of the institution, cause the proposed tax opinion to the effect that this transaction will be a tax free reorganization under the IRS code and rules to be modified or amended by the issuer of such opinion, or otherwise cause any material changes to the proforma data disclosed in the proxy statement or offering prospectus.

1110 Navaho Drive - Suite 301 • Raleigh, North Carolina 27609
Telephone 919-850-2888 Telefax 919-850-2853

WARD AND SMITH, P.A.

TELECOPIER COVER MEMORANDUM

DATE: September 21, 1993

TO: David Worth

ADDRESSEE FIRM: North Carolina Savings Institutions Division

ADDRESSEE CITY AND STATE: Raleigh, North Carolina

ADDRESSEE PHONE:

ADDRESSEE TELECOPIER PHONE: 919-850-2853

TOTAL PAGES TRANSMITTED: 2 INCLUDING COVER MEMORANDUM

CLIENT FILE NUMBER:

FROM: Anthony Gaeta, Jr.

120 West Fire Tower Road
Post Office Box 8088
Greenville, NC 27835-8088
Tel.: (919) 355-3030
Fax.: (919) 756-3689

1001 College Court
Post Office Box 867
New Bern, NC 28563-0867
Tel.: (919) 633-1000
Fax.: (919) 636-2121

x Suite 2400
Two Hannover Square
Fayetteville Street Mall
Raleigh, NC 27601
Tel.: (919) 836-1800
Fax.: (919) 836-1507

Fourth Floor
202 North Third Street
Wilmington, NC 28401-4002
Tel.: (919) 762-5200
Fax.: (919) 762-0503

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****

TELECOPIER OPERATOR: _____ TIME: _____

TRANSMISSION CONFIRMED: _____ TRANSMISSION NOT CONFIRMED: _____ TIME: _____

COMMENTS:

Proposal: Graham Savings Bank, SSB

1. The 15% stock grants will be reduced to 7.5% and a total of nine non-Director employees will be included as recipients. The amount of reductions will come from the allocated shares of the directors; no reductions will come from the share allocated to the non-director officers.

2. Mr. Motsinger's salary under his five-year contract will be reduced from $170,000 to $135,000. Ms. Johnston's salary under her five-year contract will be reduced from $125,000 to $100,000.

3. All depositors as of July 31, 1993, will be paid an interest rate increase of one and one-quarter (1.25) additional percentage point on the balance of each deposit account at that date. This will be paid in one lump sum immediately after the closing by credit to each account. During the one year following the closing (currently scheduled for a date in October), an additional one percentage point will be paid on the one-year anniversary date of the closing calculated on the average daily balance for all accounts existing on the closing date not to exceed the balance as of July 31, 1993.

EXHIBIT D

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CLARK WHARTON & DERRY
125 SOUTH ELM ST STE 600
GREENSBORO, NC 27401

RECIPIENT ACTIVITY SUMMARY

PAGE 3 OF 3
DATE 10/19/93
INVOICE NO. 5-001-59704 ACCOUNT NO. 0274-1293-9

TRACKING NOS REFERENCE	SENDER'S NAME AND ADDRESS	RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGES
6452016200 02654536 1	DAVID WORTH SAVINGS INSTITUTION DIVISON 1110 NAVAHO DRIVE STE 301 RALEIGH, NC 27609 SHIPPED 09/30/93	FRED DERRY CLARK WHARTON & DERRY 125 S ELM ST STE 600 GREENSBORO, NC 27401 AA DELIVERED 10/01/93 10:14 SIGNED: B.MOORE	5	STANDARD PAK	19.50	19.50
6452016105 19000661 1	DAVID WORTH SAVINGS INSTITUTION DIVISON 1110 NAVAHO DRIVE STE 301 RALEIGH, NC 27609 SHIPPED 10/05/93	DAVID M CLARK CLARK WHARTON & DERRY 125 SOUTH ELM ST STE 600 GREENSBORO, NC 27401 AA DELIVERED 10/06/93 11:39 SIGNED: B.MOORE	1/ NA	STANDARD LTR	11.50	11.50
6452016174 19000311 1	DAVID WORTH SAVINGS INSTITUTION DIVISON 1110 NAVAHO DRIVE STE 301 RALEIGH, NC 27609 SHIPPED 10/06/93	DAVID CLARK CLARK WHARTON & DERRY 125 S ELM ST STE 600 GREENSBORO, NC 27401 AA DELIVERED 10/07/93 11:42 SIGNED: B.MOORE	1/ NA	STANDARD LTR	11.50	11.50
		RECIPIENT SUBTOTAL	42.50	PAY THIS AMOUNT		128.60

QUESTIONS? CALL OUR BILLING SERVICE CENTER, 800 622 1147, 7AM - 9PM (CST) MONDAY - FRIDAY (IN MEMPHIS, TN, CALL 901-307 2000)
TO ENSURE PROPER CREDIT PLEASE RETURN THE REMITTANCE ADVICE (1ST PAGE OF THIS INVOICE) WITH YOUR PAYMENT.
MAIL TO: FEDERAL EXPRESS CORP., P.O. BOX 1140, DEPT. A, MEMPHIS, TN 38101 - 1140

FedEx M 0145 5/91

1148

11 OTHER PACKAGING
16 FEDEX LETTER*
12 XX FEDEX PAK*
13 FEDEX BOX
14 FEDEX TUBE

Economy Two Day
30 ECONOMY*

Freight Service
70 OVERNIGHT FREIGHT**
80 TWO DAY FREIGHT**

51 OTHER PACKAGING
56 FEDEX LETTER*
52 FEDEX PAK*
53 FEDEX BOX
54 FEDEX TUBE

Government Overnight
46 GOV'T LETTER
41 GOV'T PACKAGE

HOLD AT FEDEX LOCATION WEEKDAY (Fill in Section H)
2 XX DELIVER WEEKDAY

Saturday Service
31 HOLD AT FEDEX LOCATION SATURDAY (Fill in Section H)
3 DELIVER SATURDAY (Extra charge)
9 SATURDAY PICK UP (Extra charge)

Special Handling
4 DANGEROUS GOODS (Extra charge)
6 DRY ICE
DESCRIPTION
12 HOLIDAY DELIVERY (If offered) (Extra charge)

Total Total Total

DIM SHIPMENT (Chargeable Weight)

L x W x H

Federal Express will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, and document your actual loss for a timely claim. Limitations found in the current Federal Express Service Guide apply. Your right to recover from Federal Express for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the declared value specified to the left. Recovery cannot exceed actual documented loss. The maximum Declared Value for FedEx Letter and FedEx Pak packages is $500.

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Sender authorizes Federal Express to deliver this shipment without obtaining a delivery signature and shall indemnify and hold harmless Federal Express from any claims resulting therefrom.

Release Signature:

Declared Value Charge

Other 1

Other 2

Total Charges

REVISION DATE 12/91
FORMAT 158

158

NORTH CAROLINA DEPARTMENT OF COMMERCE
SAVINGS INSTITUTION DIVISION
SAVINGS INSTITUTION COMMISSION

IN THE MATTER OF GRAHAM SAVINGS BANK, SSB	))	SECOND AMENDED REQUEST FOR PUBLIC HEARING

Maurice Koury and Cary Allred amend their Request for Public Hearing filed October 4, 1993, and show the Savings Institution Division: Savings Institutions Commission the following:

1. Maurice J. Koury, P. O. Box 850, Burlington, N.C., is a substantial depositor in Graham Savings Bank, SSB (herein Graham Savings).

2. Cary Allred, 4307 Sartin Road, Burlington, N.C., is a substantial depositor in Graham Savings.

3. On September 21, 1993, a meeting was held at Graham Savings at which, so management of Graham Savings Bank contends, members of Graham Savings, by a purported vote of 53%, approved a conversion from a mutual savings bank to a stock savings bank and immediate acquisition by CCB Financial Corporation (herein CCB).

4. Prior to September 21, 1993, and subsequently, the Administrator of the Savings Institution Division acted in such a way as to affect the rights, duties, and privileges of Koury and Allred, petitioners herein, of others similarly situated, and of Graham Savings as an institution. Pursuant to TO4:16A.0401 and .0403 of the North Carolina Administrative Code Koury and Allred, on behalf of

themselves, others similarly situated, and the institution, do hereby request a public hearing on the actions of the Administrator, and request that pursuant to G.S. 54C-52 the Administrator and/or the full Commission review and disapprove such actions.

5. Petitioners object to and request a hearing on acts of the Administrator as follows:

(a) The Administrator approved a proxy statement sent to the members of Graham Savings which the Administrator knew or should have known was defective because:

(i) the proxy statement stated as a recommendation of the Board of Directors of Graham Savings that a conversion to a stock savings bank and simultaneous acquisition be approved; said vote of the Board of Directors was defective pursuant to NCAC 16E.0103(b); and the vote thereon by the Board of Directors was illegal because all of the directors voting in favor thereof had personal and financial interests in the transaction (G.S. 54C-103, G.S. 54C-104);

(ii) All the directors breached their fiduciary duties in recommending and voting to go forward with the acquisition because they had conflicts of interest, in violation of G.S. 54C-103 and G.S. 54C-104;

(iii) The proxy statement was misleading in various ways, including but not limited to its failure adequately to disclose that CCB was obtaining Graham Savings,

which had net worth of $20,000,000, for payments of less than 50% of that, most of which payments were going to management insiders;

(iv) The proxy statement failed adequately to warn members that general proxies executed in the past might be used to vote in favor of the transaction;

(v) The proxy statement at page 9 falsely understated the requirements acknowledged in the prospectus at pages 26-27 for an affirmative re-solicitation of the members in the event of any material change in the Plan of Conversion/Acquisition. The proxy statement omits reference to the required re-solicitation and merely alludes to an "opportunity to increase, decrease or cancel their subscriptions." (Proxy Statement, p. 9).

(vi) The proxy statement was misleading and failed to effect a full disclosure of the total of the various benefits to the officers, directors and employees of Graham Savings resulting from the management recommended conversion and sale of control of the Bank, in that:

(1) The various benefits were described only in a fragmented manner with no total figure provided and no total estimate provided, as to all benefits received by officers, directors, and employees of Graham Savings, and such information as was given did not allow for computation of such totals;

(2) No monetary value of the employee retirement plan was disclosed;

(3) The proxy statement and the last minute amended proposal repeatedly refer to the value of the stock grants given to various officers, directors, and employees as a total of "15%" or "7.5%," which figures omit the significant additional value resulting from CCB payment of taxes on the stock grants;

(vii) The prospectus incorporated by reference in the proxy statement referred to CCB's acquisition of Shelby Savings Bank, SSB, which did not occur, and was false and misleading in that (A) it presented an unaudited pro forma combined condensed balance sheet which included the assets of Shelby Savings Bank, SSB, and (B) an unaudited pro forma combined condensed statement of income which included income of Shelby Savings Bank, SSB. Said false or misleading statements, which were uncorrected, are violative of NCAC 16G.0515.

(b) The Administrator approved the Plan of Conversion even though it did not comply with:

(i) G.S. 54C-33(c)(3) which required the conversion to be fair and equitable to the members and that no person receive any inequitable gain or advantage, and the Administrator made no finding with regard to G.S. 54C-33(c)(3), or to 54C-195(c)(v) which requires that "the plan of reorganization is fair and equitable to all members of the savings bank."

(ii) G.S. 54C-33(c)(7) which requires the stock to be offered to members in prescribed amounts and otherwise under a formula and procedure that is fair and equitable and is fairly disclosed. "Members" includes both director members and nondirector members and no finding was made pursuant to G.S. 54C-33(c)(7) with regard to the proposed stock grants valued at 15% or 7.5% of Graham Savings net worth offered to director members only and future stock options offered to director members only.

(c) To the extent that the Administrator has adopted rules to govern conversions his rules do not equal or exceed the requirements for conversion imposed by federal regulations in violation of G.S. 54C-33(e).

(d) The Administrator approved a full page advertisement by management in The Alamance News (which advertisement was published on September 2, 1993, after the mailing of the proxy statement but prior to the scheduled meeting on September 21, 1993), which the Administrator knew, or should have known, was false and misleading in at least the following respects:

(i) It misrepresented the ownership status of Graham Savings, stating that "depositors in a mutual institution are not owners. Never have been. Never will be." G.S. 54C-100 defines members as those who hold deposit accounts and those who are liable for payment of loans, and provides, "Members are the owners of mutual savings banks."

(ii) Although extensively discussing proxies, it failed to disclose the expected use of general proxies by management of Graham Savings at the meeting of September 21, 1993;

(iii) It made the flat statement that after a stand alone conversion a stock savings bank could not negotiate a sale of stock to an interested buyer for three years, without any explanation of significant legal exceptions to that statement.

(e) The form of special proxy forms used by management at the September 21, 1993 meeting and approved by the Administrator was not in compliance with NCAC 16G.0512 in that the form did not indicate in bold face that the proxy was solicited on behalf of management.

(f) For reasons already stated, the proxy statement and the full page advertisement were false or misleading, and the Administrator took no action to require remedial measures in violation of NCAC 16G.0515, as alleged above.

(g) The vote at the September 21, 1993 meeting was illegally obtained through the use of general proxies because, upon information and belief, such general proxies were illegally obtained after the conversion and acquisition was in process. The Administrator was advised of this on or about September 28, 1993, but has failed to examine the general proxies to determine their validity for purposes of the September 21, 1993 meeting.

In particular petitioners allege, upon information and belief, with regard to the general proxies the following:

(i) NCAC 16G.0512(b) provides that, "no proxy obtained pursuant to the conversion shall convey authority to vote at any meeting other than the meeting, or any adjournment thereof to vote on the plan of conversion." (Emphasis supplied). On March 30, 1993, a letter of intent containing an offer from CCB to Graham Savings was accepted by the Board of Graham Savings and on May 5, 1993, Graham Savings Bank's Board of Directors adopted the Plan of Conversion and Acquisition which was filed with the Administrator on June 23, 1993. Therefore, management of Graham Savings knew from March 30, 1993, forward, that a vote on conversion and acquisition would be put to the members of Graham Savings. Employees, upon pressure by management of Graham Savings, solicited general proxies from March 30, 1993 forward from depositors and borrowers, which general proxies management expected to use, and did use, in voting for the Plan of Conversion and Acquisition. The collection of said general proxies was therefore pursuant to the conversion, they conferred authority to vote at meetings other than the meeting considering the conversion and acquisition, and the collection was therefore in violation of NCAC 16G.0512(b).

(ii) NCAC 16G.0512(d) allows the use of a general proxy "previously obtained" if the voting member previously granting such proxy is furnished a proxy statement and does

not grant a later dated proxy to vote at the meeting. Whether or not voting members were, after August 19, 1993, when the proxy statement was mailed, furnished a proxy statement and did not grant a later dated proxy, such general proxies were not permitted pursuant to NCAC 16G.0512(d) if they were obtained after March 30, 1993, because they were not "previously obtained" within the meaning of NCAC 16G.0512(d) and Section IV of the Plan of Conversion which contains the same requirement as the foregoing regulation.

(iii) Upon information and belief, at least 175-200 of the proxy statements mailed to members on or about August 19, 1993, were returned undelivered, but notwithstanding this the general proxies of some or all of these persons who were not furnished with proxy statements were voted by management in favor of the plan, in violation of NCAC 16G.0512(d) which requires that before a previously executed proxy can be used the voting member must be furnished a proxy statement and not grant a later dated proxy to vote at the meeting.

(h) To the knowledge of and with approval of the Administrator, management, on September 20, 1993, materially and substantially amended the Plan of Conversion and the Acquisition Agreement, and used such amendment verbally and selectively to seek changes by members in their proxies and additional proxies and votes favorable to their position, all in clear violation of Sections .0509 through .0516 of NCAC 16G.0500. Said amendment provided for the first time that if

a member adopted the Plan of Conversion and Acquisition the bank would deposit in his account funds which amounted to 1 1/4% of the balance of said account at July 31, 1993, and would deposit an additional 1% on the outstanding balance, not exceeding the amount in the account on July 31, 1993, one year later. Such amendment was hurriedly passed by the Board of Directors of Graham Savings on the afternoon of Monday, September 20, 1993, because members of the bank, in response to a mailing on Friday, September 17, 1993, by petitioner Cary D. Allred in opposition to the Plan of Conversion and Acquisition, were coming to the bank to withdraw proxies previously granted to management in favor of the Plan of Conversion and Acquisition. The mailing by petitioner Allred had been edited and then approved by the Administrator. In the early afternoon of September 20, 1993, petitioner Allred was requested to come to the office of the Graham Savings Bank and there, in a meeting with a member of the Board of Directors of Graham Savings, a Vice-President of CCB, and legal counsel of the Bank, was informed of a slightly different version of the aforesaid amendment, a copy of which is attached hereto. Petitioner Allred was requested to withdraw his opposition to the transaction, it being stated that if he would so withdraw his opposition he would be given full credit for having achieved the additional value to the members of Graham Savings Bank, would be a hero to the people of Alamance County, and could get elected to any office he desired. Petitioner Allred's reply was that he

would not withdraw his opposition to the transaction, because he believed the additional "sweetener" offered to the members through the amendment was still inadequate value to them. Upon Mr. Allred's continuing refusal to approve the transaction, Graham's Board of Directors nonetheless enacted the change in the Plan of Conversion and Acquisition on the afternoon of September 20, 1993, and in direct violation of Regulation .0509 through .0516 and of petitioners' rights to communicate their opposition to any Plan of Conversion and Acquisition pursuant to Regulation .0514, proceeded wrongfully to:

(a) Improperly use information about proxies already filed, thereby determining which proxies they needed to have changed and which members with large interests they needed to have vote initially so as to avoid the absence of a vote as being counted contrary; and

(b) Mount an intensive telephone campaign to selected members soliciting proxies on the basis of the foregoing amendment and soliciting members to change proxies already voted against the Plan of Conversion and Acquisition.

The amendments of September 20, 1993, not described in any proxy statement or in any other written communication sent to all the members was not officially approved by the Administrator although he knew of it and informally purported to approve it, and all effective opposition to it was precluded by the lateness of its enactment. While

essentially a concession by management that the conversion and acquisition was not fair and equitable to members, this amendment did not cure the violations pursuant to G.S. 54C-33(c)(3) and G.S. 54C-195(c)(v).

(i) Upon information and belief, on or about September 30, 1993, the Administrator signed a document which purported to approve the amendment of Graham Savings charter from a mutual to a stock company but did not approve the acquisition by CCB. Said approval was void and of no effect for the reasons previously and subsequently stated herein, and, whether or not the document approved the conversion, it did not approve the acquisition by CCB. Furthermore, any approval of the transaction, or any portion thereof, is void and of no effect for the further reasons:

(a) A letter of September 30, 1993, to the Administrator from management's legal counsel, Ward and Smith, P.A., while claiming that the above September 20 amendment to the Plan of Conversion and Acquisition did not make a material change in the pro forma data set forth in the Subscription and Community Offering Prospectus dated August 19, 1993, misleadingly failed to state what was obviously a material adverse change in the pro forma data set forth in the aforesaid prospectus of August 19, 1993, in that the acquisition by CCB of Shelby Savings Bank, which was abandoned between August 19, 1993, and September 21, 1993, was materially and prominently set forth in the pro forma data in the Subscription and Community Offering Prospectus;

(b) No letter from Ward and Smith or any other counsel has been filed stating the required opinion of counsel as to the matters set out in NCAC 16G.0823(2)(a-c); and

(c) No circular for the offering or its amendments was prepared in compliance with the regulations, as required by NCAC 16G.0823(3).

(d) The actions of the Administrator and his construction of the agency's regulations violate the due process and equal protection clauses of the United States and North Carolina Constitutions.

6. No conversion and acquisition can be finalized by the Administrator or by the parties for the reasons stated above, and additionally because the substantial and material changes in the Plan of Conversion and Acquisition, as alleged in in paragraph 5(h) above, require, at a minimum, an affirmative re-solicitation of the members of Graham Savings Bank, further approval by the Administrator of said re-solicitation, and an opportunity for members to change or eliminate their subscriptions. (Subscription and Community Offering Prospectus, pp. 26-27; Proxy Statement, p. 9). Furthermore, other reports and certifications required by the Administrator and by law have not been filed, including but not limited to the furnishing to the Administrator of a balance sheet of Graham showing the adjusting entries and capital accounts after closing.

7. Petitioners, others similarly situated, and Graham Savings as an institution, are aggrieved by the actions of the Administrator as alleged herein because (a) they are deprived of their ownership and statutory interests in Graham Savings, (b) they are deprived of their rights to effect a stand alone conversion of Graham Savings, liquidate Graham Savings, or continue business as a mutual savings bank, any one of which would be more in the best interests of petitioners and the other members, and (c) aside from being destroyed as an entity Graham Savings is being harmed because opposition by the members of Graham Savings to this transaction are causing many to withdraw their accounts, and said withdrawals being fueled by statements by representatives of the bank that the transaction is a "done deal," all to the detriment of the business and future business of Graham Savings.

WHEREFORE, pursuant to NCAC 16A.0400, .0401, and .0403, and G.S. 54C-52, petitioners Koury and Allred, for themselves, others similarly situated, and Graham Savings pray for a public hearing and that the Administrator and/or the full Commission disapprove the actions of the Administrator as alleged herein, thereby voiding all previous proceedings in the proposed conversion and acquisition. Petitioners further pray that until these matters can be

decided no further actions be taken or permitted which would permit the conversion and acquisition to go forward, and that a stay of any such actions be entered.

OF COUNSEL:
CLARK WHARTON & BERRY
125 South Elm Street
P. O. Box 1349
Greensboro, NC 27402
(919) 275-7275

David M. Clark (Bar #813)

Frederick L. Berry (Bar #9696)

Virginia S. Schabacker (#19255)

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed by facsimile and served by mailing copies thereof, first class postage prepaid, as follows:

Mr. Anthony Gaeta
(Fax No. 919-836-1507)
Ward and Smith, P.A.
Suite 2400
Two Hannover Square
Fayetteville Street Mall
Raleigh, NC 27601

Mr. Robert A. Jacobsen, Administrator
(Fax No. 919-850-2853)
North Carolina Savings Institution Division
1110 Navaho Drive, Suite 301
Raleigh, NC 27609

This the 8th day of November, 1993.

Attorney for Petitioners

Proposal: Graham Savings Bank, SSB

1. The 15% stock grants will be reduced to 7.5% and a total of nine non-Director employees will be included as recipients. The amount of reductions will come from the allocated shares of the directors; no reductions will come from the share allocated to the non-director officers.

2. All depositors as of July 31, 1993, will be paid an interest rate increase of one additional percentage point on the balance of each deposit account at that date. This will be paid in one lump sum immediately after the closing by credit to each account. During the one year following the closing (currently scheduled for a date in October), an additional one percentage point will be paid on the one-year anniversary date of the closing calculated on the average daily balance for all accounts existing on the closing date not to exceed the balance as of July 31, 1993.

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09/23/93
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JOHN A. KENNEDY

January 17, 1994

Mr. Stephen L. Neal, Chairman
U.S. House of Representatives
Subcommittee on Financial Institutions
Room 212
O'Neill House Office Building
300 New Jersey Avenue, S. E.
Washington, D.C. 20515

Dear Congressman Neal:

As a group of individuals, in Rutherford County, N. C., joined together as Citizens For Fairness (an AD HOC Committee of local residents), we support and applaud efforts to deter the abuse of fiduciary duty by officers and directors of Mutual Savings and Loan Associations in the S & L bank Merger/Conversion process. Bill HR 3615 is a vital step forward in attempting to remedy this existing and ongoing process. This bill, had it been in effect this past year, would have drastically changed the Merger/Conversion of First Savings Bank of Forest City, N. C. and Centura Bank. While this bill may not cure all the problems of Merger/Conversion, it will help delay or postpone this procedure until further action can be taken.

The Merger/Conversion of First Savings Bank with Centura Bank is a classic example of what money paid to a few people can do. A Board of Directors agreed to sacrifice a strong, respected Mutual Savings and Loan with the sole purpose of satisfying their own greed at the expense of trusting depositors.

Sufficient, understandable material was not available for the average depositor to understand. The pertinent information was hidden in a ninety (90) page booklet and as a

(Continued page 2)

result of this most depositors just gave up and at the urging of the Board of Directors signed their proxies. Many of them just threw them away characterizing the frustrations felt by the average depositor in trying to decipher the complicated and, often, the conflicting information in the booklet on the notice of special meeting of the members. (It should be pointed out here that if an eligible voter had signed a previous proxy this may have been used as a vote in favor of Merger/Conversion. If a previous proxy had been given, an eligible voter had to revoke said proxy and then cast his vote.) The voting system is highly suspect and it is very possible that insider trading has taken place. Only approximately thirty-three (33) days were given between the mailing of the information booklet and the general meeting. As a result of the limited time schedule efforts to make known the true purpose of this Merger/Conversion were severely hampered. A petition to the directors was ignored and at the general meeting a motion to delay was easily defeated due to the voting process. As concerned depositors, we were handicapped by not having names and addresses of the membership of First Savings Bank of Forest City. Also, time was not sufficient and resources were not readily available to make a difference.

The compensations to officers and directors are astronomical. A few examples are as follows: (These figures are very conservative because of lucrative employment contracts and other perks.)

(Continued Page 3)

1. John Perkins, President and C. E. O., is to receive upwards of $1,250,000.00 plus five year employment contract. (Following the first announcement of Conversion/Merger, he was given and accepted a new Buick Park Avenue automobile by Centura).

2. Juanita P. Newton, Vice President and Secretary, is to receive more than $400,000.00 plus a lucrative employment contract allowing other compensation.

3. Five Directors are to receive more than $500,000.00 each.

4. One Director is to receive more than $300,000.00.

5. Several other employees are being rewarded generously.

The above information far overshadows the possible remuneration available for depositors. They were offered a chance to purchase Centura stock at a 15% discount or to receive a 1% bonus on their savings account with the bonus being figured on the lowest balance during the following year. The preceding information shows how over the years the rights of Mutual members have been obscured with Officers and Directors increasingly treating the assets of a Savings and Loan as their own personal property. From our standpoint, the Merger/Conversion process has been used as a tool to deprive the members, the true owners, of a Mutual Savings and Loan of their pro rata share of its sale value. The local community has been deprived of a local and highly profitable institution. Fraudulent intent is evident in this transaction as Centura's own appraiser set the value of First

(Continued Page 4)

State Bank at $13,000.000.00 of which $12,000,000.00 was retained earnings. Centura accomplished this purchase with the sale of a new issue of stock. A portion of this stock was used for Officers and Directors compensation while still leaving in excess of $8,000,000.00 cash for Centura.

Previous information points out the necessity to take steps, by legislation if necessary, to protect the members of a Mutual Savings and Loan in the event of a sale. Management should not be able to reap huge financial rewards at the expense of the members.

It is evident that possible crimes are being committed under Merger/Conversion with the sanction and blessings of the North Carolina Banking Commission and the Savings Division. A petition filed with the Savings Division asking for a hearing has been denied. A similar petition filed with the Banking Commission has resulted in nothing to this date. We find it extremely odd that at a meeting with the Banking Commission we were told that their only responsibility in Merger/Conversion was to be sure the acquiring institution was financially healthy. (Why not just dissolve this Commission and appoint a CPA?) Also, several of our group wrote the Attorney General asking that his office look into this situation but to no avail. We were informed they could do nothing unless called in by the Banking Commission or the Savings Division. What then is the purpose of the Attorney General's office? Legal remedies are very unclear; yet we feel our counsel will do everything possible to overturn this

(Continued Page 5)

very illegal Merger/Conversion. Cynicism causes us to wonder if this is now a government of the banks, by the banks and for the banks.

The urgency of this situation demands that we put to an end this insidious, highly unethical process.

Sincerely,

John A. Kennedy
Citizens for Fairness

JAK:CSH

CC: Mr. Bruce Byers
Mr. Mike Calhoun, Esq.

Testimony of

EVELYN SURRATT

Before the
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
of the
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Winston-Salem, North Carolina
January 20, 1994

My name is Evelyn Surratt and I live in Albemarle, North Carolina. I'm retired after 31 years in the textile industry. I'm a member of Home Savings Bank and I've been a member down there since the 1950s. Now they're selling out to B,B&T. I don't think the officers and directors are doing right by us members. It looks to me like they're looking out for themselves instead of us. They should treat the people right who stuck by them all these years, but they're not.

The statute book says we're the owners. I've seen it. It's plain. Anybody can understand it. I'll read it to you, "Members are the owners of a mutual savings bank." (Section 54C-100 of the North Carolina General Statutes, copy attached.) But they've got all these high-powered experts trying to tell us the law doesn't mean what it says. That's just not right. A lot of folks in Albemarle might not have a whole lot of education, but we're smart enough to know right from wrong.

I'm not just speaking for myself. I've talked to a bunch of people who are real upset. Whether they'll speak out or not, I don't know. But they don't like it.

Most of them don't even understand what the deal is. People in Albemarle aren't Wall Street Bankers. They would never know what's happening down at Home Savings if it wasn't for the newspapers. Lawyer Blalock gave me some proxies from other savings and loans in other towns. I can tell you that 9 out of 10 people in Albemarle would throw them away because they're just too complicated. I couldn't figure out the proxies I read. I know how the deal works because of the newspaper articles and what lawyer Blalock has told me. But I would've never figured it out from the proxies.

For example, I would've never figured out that B,B&T was getting millions of dollars free. But that's important to know because B,B&T has never done one thing for Stanly County. Yet it's taking millions of dollars away from us. Millions of dollars that poor people in Stanly County struggled over 80 years to save up.

Likewise, I would've never figured out that Home Savings got a proxy from me way back when I opened up my account. That's important, too, because the officers and directors can turn around and use it against me if I don't stop them.

B,B&T and Home Savings try to make it right by giving a couple million dollars to charity. Charity is good and I'm all for charity. But charities didn't build Home Savings and charities don't own it. Us members built it and own it. But if they aren't going to pay the owners, they should give *all* the money to charity, not just a couple million dollars. And it should be local charity, not charities off somewhere else.

Before I finish I want to thank you for helping the little people. I'm talking about hard-working people who try to live right and don't take advantage of anyone. It seems like nobody tries to look after them these days. But you *are* looking out for them and I'm obliged to you. These people don't have any way of fighting these big banks unless you fight for them.

00292:Surratt.632

§§ 54C-88 to 54C-99: Reserved for future codification purposes.

Article 6.

Corporate Administration.

§ 54C-100. Membership of a mutual association.

The membership of a mutual State savings bank shall consist of:

(1) Those who hold deposit accounts in a savings bank, and

(2) Those who borrow funds and those who become obligated on a loan from the savings bank, for as long as the loan remains unpaid and the borrower remains liable to the savings bank for the payment of the loan.

A person, as a matter of right or in a trust or other fiduciary capacity, or any partnership, association, corporation, political subdivision, or public or governmental unit or entity may become a member of a mutual savings bank. Members shall be possessed of voting rights and any other rights as are provided by a savings bank's certificate of incorporation and bylaws as approved by the Administrator. Members are the owners of a mutual savings bank. (1991, c. 680, s. 1.)

§ 54C-101. Directors.

(a) The directors of a mutual savings bank shall be elected by the members at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a savings bank may choose to prescribe in its bylaws. Voting rights for borrowers shall be fully prescribed in a detailed manner in the bylaws of the savings bank.

(b) The directors of a stock savings bank shall be elected by the stockholders at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation.

(c) A director of a State savings bank shall have a significant ownership interest in the State savings bank.

(d) A State savings bank shall have no less than five directors. (1991, c. 680, s. 1.)

§ 54C-102. Bylaws.

The bylaws and any amendments shall be certified by the appropriate corporate official and submitted to the Administrator for approval before they may become effective. (1991, c. 680, s. 1.)

Testimony of

GEORGE E. EDDINS, JR., M.D.

Before the
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
of the
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Winston-Salem, North Carolina
January 20, 1994

Note: Dr. Eddins is a retired physician from Albemarle, North Carolina. He is highly respected in the community, both personally and professionally, and he was a pioneer in his field. Dr. Eddins was instrumental in establishing Stanly County Hospital's specialized cardiac care unit in 1957. This small, rural community hospital was one of the first to have such facilities, thanks largely to Dr. Eddins. Indeed, it had these facilities before many major medical centers. In addition, Stanly County Hospital was the first in the nation to have all its RNs and LPNs certified in CPR. Again, Dr. Eddins was largely responsible.

I am Dr. George Eddins and I am a retired internist. Thank you for allowing me to testify before your committee. I have done business with Home Savings Bank since 1951 and I have retirement money on deposit there over and above what is insured by the FDIC. Therefore, I have investment at risk. Yet I will receive no compensation for my ownership interest in Home Savings. On the other hand, the officers and directors - who are *not* at risk and have *no* ownership interest by reason of their offices - will be paid millions of dollars. This is the main problem I see with Home Savings Bank selling out to BB&T: somebody who is not at risk is getting rich - and quite rich. These men have been compensated over the years for handling the affairs of the savings bank. They have set their own salaries and I assume they paid themselves what they wanted. They were never at risk, but I was. Yet they are the only ones receiving compensation.

True, BB&T may pay an extra percentage point of interest if I leave my money there for one year after they sell out. But this is not compensation for my ownership interest or the risk I have borne. It is just a marketing gimmick to get me to leave my money there. Besides, the newspapers are reporting that 1993 was a banner year for bank profits. They should have spread a little of that profit around and paid me an extra percentage point already.

True, they are also offering BB&T stock at a discount. But this is not compensation for my ownership interest or the risk I have borne, either. It amounts to nothing more than dangling a carrot in front of me, but I do not like carrots. I do not want BB&T stock. Even if I did, I would have to take money out of savings to buy it and I do not want to do that.

Although I could afford to do so if I wanted, many of the depositors just simply could not afford to, even if they wanted. Besides, they are going to sell BB&T stock at a discount to anyone who lives in Stanly County, whether they are members of the savings bank or not. That does not sound to me like it was designed to be compensation for anybody's ownership interest.

I have known everyone at Home Savings for a long time. I trusted them implicitly. Until I learned about this deal, I had assumed the officers and directors were going to look after my interest in the future as they have in the past. Now I no longer think so. The statutes say it is a conflict of interest for an officer or director to have a financial stake in anything that comes before the board. (Sections 54C-4(b)(9) & 104 of the North Carolina General Statutes, copies attached.) But I am afraid they are becoming millionaires at my expense and the expense of the other owners.

It does not even appear that they will be explaining their deal fully. I am a well-educated person, but I do not feel that I understand all I need to know about their deal. I have read proxy materials from other deals, but I do not feel that I understand them sufficiently to know what I need to know. If I were to understand it fully, I would have to have a Philadelphia lawyer - or maybe an Albemarle lawyer. If I do not understand it, I think it safe to say that many - if not most - people in Albemarle do not understand it, either. Thank you on behalf of myself and all the other members of Home Savings Bank for being interested in what we have to say.

00292:Eddins.632

§ 54C-4. Definitions and application of terms.

(a) The term "savings and loan association" when used in the General Statutes shall include savings banks chartered under this Chapter.

(b) Unless the context otherwise requires, the following definitions apply in this Chapter:

(1) Administrator. — The Administrator of the Savings Institution Division.

(2) Affiliate. — Any person or corporation that controls, is controlled by, or is under common control with a savings institution.

(3) Associate. — Any person's relationship with (i) any corporation or organization, other than the applicant or a majority-owned subsidiary of the applicant, of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (ii) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse who lives in the same house as that person, or any relative of that person's spouse who lives in the same house as that person, or who is a director or officer of the applicant or any of its parents or subsidiaries.

(4) Association. — A savings and loan association as defined by G.S. 54B-4(b)(5).

(5) Branch office. — An office of a savings bank, other than its principal office, that renders savings institution services.

(6) Capital stock. — Securities that represent ownership of a stock savings bank.

(7) Certificate of incorporation or charter. — The document that represents the corporate existence of a State savings bank.

(8) Commission. — The North Carolina Savings Institutions Commission.

(9) Conflict of interest. — A matter before the board of directors in which one or more of the directors, officers, or employees has a direct or indirect financial interest in its outcome.

(10) Control. — The power, directly or indirectly, to direct the management or policies of a savings bank or to vote twenty-five percent (25%) or more of any class of voting securities for a savings bank.

(11) Depository institution. — A person, firm, or corporation engaged in the business of receiving, soliciting, or accepting money or its equivalent on deposit, or of lending money or its equivalent, or of both.

(12) Disinterested directors. — Those directors who have absolutely no direct or indirect financial interest in the matter before them.

(13) Dividends on stock. — The earnings of a savings bank paid out to holders of capital stock in a stock savings bank.

(14) Division. — The Savings Institutions Division.

(15) Examination and investigation. — A supervisory inspection of a savings bank or proposed savings bank that may

§ 54C-103. Duties and liabilities of officers and directors to their associations.

Officers and directors of a State savings bank shall act in a fiduciary capacity towards the savings bank and its members or stockholders. They shall discharge duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent persons would exercise under similar circumstances in like positions. (1991, c. 680, s. 1.)

§ 54C-104. Conflicts of interest.

Each director, officer, and employee of a State savings bank has a fundamental duty to avoid placing himself in a position which creates, or which leads to or could lead to a conflict of interest or appearance of a conflict of interest having adverse effects on the interests of members, customers, or stockholders of the savings bank, soundness of the savings bank, and the purposes of this Chapter. (1991, c. 680, s. 1.)

§ 54C-105. Voting rights.

Voting rights in the affairs of a State bank may be exercised by members and stockholders by voting either in person or by proxy. (1991, c. 680, s. 1.)

§ 54C-106. Annual meetings notice required.

(a) A savings bank shall hold an annual meeting of its members or stockholders. The annual meeting shall be held at a time and place as shall be provided in the bylaws or determined by the board of directors.

(b) The board of directors of a mutual savings bank shall cause to be published once a week for two weeks preceding such meeting, in a newspaper of general circulation in the county where such savings bank has its principal office, a notice of the meeting, signed by the savings bank's secretary, and stating the time and place where it is to be held. In addition to the foregoing notice, a savings bank shall disseminate additional notice of any annual meeting by notice made available to all members entering the premises of any office or branch of the savings bank in the regular course of business by posting therein, in full view of the public and its members, one or more conspicuous signs or placards announcing the pending meeting, the time, date and place of the meeting and the availability of additional information. Printed matter shall be freely available to the members containing any information as may be prescribed in rules issued by the Administrator. The additional notice shall be given at any time within the period of 60 days before and 14 days before the meeting and shall continue through the time of the meeting.

(c) The board of directors of a stock savings bank shall cause a written or printed notice, signed by the savings bank's secretary and stating the time and place of the annual meeting, to be delivered not less than 10 days nor more than 50 days before the date of the meeting, either personally or by mail to each stockholder of

TESTIMONY OF
CECIL W. SEWELL, JR.
PRESIDENT AND CHIEF OPERATING OFFICER
CENTURA BANKS, INC. AND CENTURA BANK

BEFORE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
of the
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING H.R. 3615
(THE MUTUAL BANK CONVERSION ACT)

WINSTON-SALEM, NORTH CAROLINA

JANUARY 20, 1994

On behalf of my colleagues at Centura, I would like to thank you for affording me the opportunity to testify about H.R. 3615, the Mutual Bank Conversion Act.

To begin my testimony, I believe a word about Centura's experience with mergers and acquisitions generally is in order. Centura itself is the product of a merger of equals in 1990. Since its creation, Centura has grown from an institution with $2.6 billion in assets and 117 branches to one with $4 billion and 156 branches, largely through a series of acquisitions. We have acquired both federal and state chartered thrift institutions in both share exchanges and merger/conversion transactions. In addition, we have acquired several state chartered commercial banks in share exchanges. In sum, we have a good deal of experience in this area.

As a result of Centura's experience, my testimony will focus on the issues that we believe to be crucial to your consideration of

conversion transactions: (i) the competitive environment in which the managements of acquirors and acquired institutions are making their decisions to enter transactions; (ii) the public good that these transactions accomplish; and (iii) the equity and fairness of merger/conversion transactions under the jurisdiction of the North Carolina Savings Institutions Division and Commissioner Bob Jacobsen and his staff. At your request, I will also comment about the recent acquisition by Centura of First Savings Bank of Forest City, SSB in a merger conversion transaction[1].

The Competitive and Regulatory Environment

In the first place, I would point out to you that the merger/conversion phenomenon in North Carolina is not a new one. It is my understanding that (i) from 1989 to 1993, ten federal and state mutual thrift institutions located in North Carolina were acquired under the OTS regulatory scheme and (ii) from April 1, 1993, to November 31, 1993, six North Carolina savings banks were acquired in conversion transactions. By and large, these acquisitions have been of healthy institutions; that is certainly true with regard to transactions completed within the last year or so.

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[1]In my testimony, I will refer to the acquisition of a mutual thrift institution by a bank holding company as a "merger conversion." This term fits Centura's method of accomplishing these transactions, by merging the converted thrift institution into Centura Bank at the effective date, rather than holding the institution separate for a period as some of our competitors do.

Why are these transactions occurring? The merger conversion phenomenon is best understood as a response by both acquiring holding companies and acquired thrift institutions to profound changes that have occurred in the financial services industry. As I am sure you know, banks and thrifts face continuing and increasing competition within the traditional financial services industry and are also confronted by well financed and efficient "non-bank" competitors. Further, the regulatory costs of maintaining our franchises have gone up and will continue to rise; compliance with FIDICIA and the proposed CRA regulations come to mind in this regard.

Viewed from a public policy perspective, these developments are generally desirable. Competition among institutions should increase consumer welfare by increasing the variety of financial services offered to consumers and the efficiency with which such services are rendered. Regulatory burden, although arguably a drag on economic efficiency, is a response to perceived public needs and will not go away. We at Centura may not be crazy about these developments, but we acknowledge that they define the environment in which we will compete in the future.

Faced with the challenges outlined above, what should banks and thrifts do? There is no one "right answer" and different institutions will come to different conclusions. Some institutions will work out a business strategy tailored to the new competitive

realities and will continue to do business. This group of institutions includes Centura and its peers and a number of smaller banks and thrifts that have the management and financial resources to stay the course.

Other institutions will determine that they do not have the necessary management or financial resources. In our view, the best answer for these institutions is to be acquired by another institution better suited to compete in the financial services marketplace. This group of institutions includes a number of mutual thrift institutions, particularly the smaller ones. Let me hasten to add that there is nothing "wrong" with the members of this group. Quite the contrary: they are conservatively and efficiently managed institutions that have done much good. However, the methods of operation that worked for them in the highly regulated and segmented marketplace of the past do not work as well today and they find themselves without the necessary resources to adapt to changes in the marketplace.

Merger Conversion Transactions are in the Public Interest

Merger conversion transactions are a natural and effective response to the competitive concerns described above. These transactions meet the needs of both of the groups of financial institutions referred to above by (i) allowing institutions that are willing and able to adapt to the new realities of the marketplace to grow in a

capital-effective way; and (ii) allowing institutions that are not willing or able to adapt to sell out in a way that benefits all of their constituencies. This process is in the public interest because it causes capital to flow to its most efficient users and increases competition by strengthening the most competitive financial institutions and removing marginal competitors.

In addition to the benefits just mentioned, merger conversions must be in furtherance of federal and state public policy in respect of financial institutions by (i) maintaining the safety and soundness of the financial system, particularly banks and thrift institutions, and (ii) promoting service of the public's convenience and necessity. Merger conversions clearly are consistent with these policy goals.

There is no question that the safety and soundness of bank acquirors in merger conversion transactions are improved by such transactions. Although the competition that has resulted from the North Carolina regulatory approach has raised the cost of acquiring mutual thrifts, these transactions nonetheless bring capital to the acquiror and, as a result, increase its safety and soundness. You don't need to take my word for this: merger conversions are reviewed and approved by the acquiror's regulator to insure such safety and soundness.

Service of public convenience and necessity is also furthered by merger conversions. The interests of communities in North Carolina are best served by competition among strong and well-capitalized financial institutions offering a wide variety of products and services. Recent merger conversions have included substantial community contributions that will result in significant benefit to the communities served by the acquired institution. These contributions, while laudable, have obscured the fact that acquiring institutions are entering acquisition conversions either to expand their existing markets or to enter new markets. The essential purpose of the transaction from the acquiror's point of view cannot be achieved unless it satisfies the needs of customers and potential customers in the service area of the acquired thrift. To do so it will, as a rule, offer an expanded range of services, including commercial and consumer lending and investment services to such customers. This expansion of services is the fundamental good that the transaction brings to the community.[2]

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[2]It may be of interest to the members of the Subcommittee and staff that available research supports the conclusion that regional banks do a very good job of meeting the credit needs of their communities. In testimony to the North Carolina General Assembly in 1988, Dr. Robert A. Eisenbeis, now Wachovia Professor of Banking at the Kenan-Flagler Business School of the University of North Carolina, pointed out that community banks raised about 95.4% of their funds in local markets, while deploying 56.8% of their assets in such markets. Regional banks (those between $1 and $10 billion in assets) raised about 61.5% of funds in local markets while deploying 54% of assets in local markets. Money center banks raised about 28% of their funds in local markets and deployed about 28.5% of assets in local markets.

North Carolina Merger Conversions are Fair and Equitable

This brings me to the apparent reason for this hearing -- the alleged unfairness of merger conversion transactions to depositors and the alleged excessive compensation to directors and officers. I beg to differ with these allegations. Although I am not a lawyer, I am told by those who are that the internal affairs of state chartered institutions are governed by state law unless state law is preempted by federal law, based I would presume on some federal policy or interest. I believe that a fair assessment of the North Carolina regulatory policy regarding merger conversions reveals that policy, as written and in practice, to be fair and equitable and that there is no reason for preemption of such policy.

The North Carolina policy regarding merger conversions is based on arms-length negotiation between the parties and the approval of depositors after full disclosure of all material facts relating to the transaction. This policy allows discussion and debate among the parties involved, including depositors and the public, on essentially equal informational footing. It is important to note that criticism of recent transactions has been based on information derived from the proxy material used to solicit the needed approval of depositors and that in one case the transaction was not approved. Given these circumstances, it is difficult to understand the argument that these merger conversions have not been conducted

in a fair and equitable manner.

The issue of compensation to officers and directors is best left to depositor vote, rather than regulatory restriction. Given the well-known problems of thrift institutions and the modesty of compensation in many thrifts, depositors may in their discretion determine that the officers and directors of a healthy acquired thrift deserve substantial benefits for a job well done. In the current, relatively benign, economic climate many people have forgotten the difficulties that these managements and boards have confronted successfully and the risks, including legal risks, that these people faced in agreeing to be officers and directors of thrift institutions. We at Centura haven't forgotten and I am proud to say that the depositors of the institutions that we have been privileged to acquire, including First Savings Bank of Forest City, haven't forgotten either.

In addition, an often overlooked aspect of North Carolina acquisition conversions is that employees of the acquired institution often obtain substantial benefits. Here again, depositors may well determine that such benefits are appropriate. In general, the issue of compensation should be determined with respect to the specific situation of the acquired institution. The North Carolina policy allows this result.

Depositor interests are protected in North Carolina merger conversions. The interest of a depositor in a North Carolina mutual institution is essentially that of a creditor rather than owner. This conclusion is supported by court decisions in cases relating to merger conversions. It is also supported by common sense. As any thrift executive will tell you, depositors will give up their "ownership" rather quickly if an institution's interest rates to depositors are not competitive. Further, to the extent that depositors have an ownership interest in the acquired institution, the North Carolina policy allows the effective exercise of that interest on the basis of full disclosure.

The North Carolina policy gives depositors who really want to be owners the opportunity to do so on a very advantageous basis. In recent North Carolina merger conversions, depositors have had the right to subscribe to acquiror shares, which are publicly traded and liquid, at up to a 15% discount from the market value of such shares. This is in contrast to the maximum 5% discount allowed in federal transactions. Further, recent transactions have allowed depositors to receive bonus interest in addition to such discounts, a feature that has not been allowed to date in federal conversions.

In sum, the interests of the public, depositors and local communities are served by merger conversions under the North Carolina policy.

No discussion of the North Carolina merger conversion policy would be complete without reference to its administration by Commissioner Bob Jacobsen and his staff. As I hope you are aware, Commissioner Jacobsen is a financial services regulator who has had a long and distinguished career at both the federal and state levels. Under his leadership, the Savings Institutions Division has established a regulatory environment that has resulted in excellent overall health for the thrift industry in North Carolina. In the merger conversion area, Bob and his staff have created a fair market-oriented playing field in which acquirors, thrifts and their depositors have been free to work out transactions that meet the needs of all. I say this as one whom the North Carolina policy has cost some money, since the cost of acquisition has been higher under this policy than under the federal policy. In spite of that fact, Centura is content to stick with the current policy and to argue at the state level for improvements in the policy.

Acquisition of First Savings Bank of Forest City

In your invitation to testify, you requested that I address Centura's "experience with merger conversions of state-chartered savings banks in North Carolina, particularly First Savings Bank of Forest City." I hope that my prior remarks adequately address our experience in general. Our acquisition of First Savings Bank of Forest City is completely consistent with my prior testimony.

First Savings Bank of Forest City, SSB, was a very well-capitalized and conservatively run mutual savings bank located in Forest City, Rutherford County, North Carolina. First Savings Bank was of interest to Centura because it was a high-quality institution and because of its location. Centura was already present in Rutherford County as the result of our acquisition of a federally chartered mutual thrift in Rutherfordton in 1991. The Rutherfordton transaction had been very successful for us and, when we learned that First Savings Bank was considering a merger conversion, we pursued the transaction vigorously.

Guided by expert counsel and an experienced financial advisor, First Savings Bank had reviewed its options and determined that a merger with another institution was the best course. It is my belief as an outsider that the competitive factors mentioned above in my testimony were important in this decision by the First Savings Bank board of directors. Centura was not alone in its interest in First Savings Bank; we and the other potential acquirors were required to make written and oral presentations to the First Savings Bank board. It was made clear to us that to win, Centura would have to show how it proposed to serve all of the constituencies of First Savings Bank. To put it mildly, a hard bargain was driven.

After First Savings Bank agreed to be acquired by Centura, we set the lawyers to work preparing definitive documentation and related

proxy and securities offering material. The definitive documents were executed, and the necessary regulatory filings were made with the Federal Reserve, the State Banking Commission, the Savings Institutions Division and the Securities and Exchange Commission. After review by these agencies and modifications to reflect regulatory comments, the proxy and prospectus were distributed to Forest City depositors and the proxy solicitation process began. Roughly a month passed between the proxy/prospectus mailing and the special meeting of depositors to consider the transaction. During that time, we held a depositor information meeting to answer questions and to explain the transaction. The transaction was ultimately approved by a substantial majority of depositor votes.

A few depositors criticized the transaction at the special meeting and have now instigated litigation. Centura regrets the pendency of this litigation and believes that it is without merit.

Conclusion

In conclusion, I would suggest to you as an experienced participant in the North Carolina merger conversion market that federal legislation is not necessary regarding conversion transactions. Further, such legislation, if enacted, could be counterproductive in that it could discourage institutions that should be acquired from pursuing that course.

North Carolina's banking industry is nationally regarded as a leader. Statewide branching and wide powers give North Carolina institutions a substantial competitive advantages, most often noticed with regard to the "superregional banks" based here. In spite of the adverse publicity that North Carolina merger conversions have received, such transactions accomplish a public good and do so in a way that effectively protects depositor and community interests. The North Carolina policy with regard to merger conversions allows acquirors, thrift managements and depositors to negotiate such transactions in a way that fits the needs of each in the circumstances, rather than subjecting such transactions to an unnecessary "one size fits all" regulatory approach. This flexibility and creativity is the best way to insure that North Carolina financial institutions remain strong and that North Carolina communities are well served by them. Further, North Carolina merger conversions are consistent with federal policies in favor of safety and soundness and investor protection and should not be preempted by federal policies on those or other grounds.

Thank you again for giving me the opportunity to testify on this very important matter.

PRESENTATION
BY ERNEST C. ROESSLER,
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CCB FINANCIAL CORPORATION, DURHAM, NORTH CAROLINA

TO THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
WINSTON-SALEM, NORTH CAROLINA

JANUARY 20, 1994

MEMBERS OF THE COMMITTEE:

I thank you for the opportunity to give our views on H.R. 3615, the Mutual Bank Conversion Act. CCB, along with some of the other mid-tier bank holding companies in North Carolina, have been the leaders in effecting merger-conversions with healthy mutual North Carolina-chartered savings banks. If enacted H.R. 3615 would impose restrictions similar to those of the Office of Thrift Supervision on transactions of this type. This is ill-conceived and not in the best interest of either North Carolina's banks or healthy thrift institutions and the constituencies served by those healthy thrift institutions. Further, there appears to be a great deal of misunderstanding about these transactions, flamed by certain depositors and supposed public interest groups. CCB has consummated three transactions: two in Lenoir and one in Graham, North Carolina. The fourth proposed transaction in Shelby, North Carolina was terminated at the request of the Board of Directors of Shelby. It is apparent that the publicity gained in both Shelby and Graham, together with the article in North Carolina Business, has gotten the attention of the Subcommittee and has led to the thought that further federal legislation and/or regulation is necessary. Let me tell you why such legislation is ill-advised.

1. There appears to be some misconception that North Carolina regulations permit depositors to be treated unfairly. Please study the North Carolina conversion regulations and compare them with the OTS regulations. That study will point out that the regulations are almost identical as to the manner in which they treat

depositors. In a conversion transaction, whether it is coupled with an acquisition transaction or not, depositors under both sets of regulations are permitted the right to purchase stock in the transaction. What you do not understand is that if a merger transaction is connected with the conversion, North Carolina regulations permit the depositors of the converting thrift to purchase stock in the acquiring company at a 15% discount from market value. To the best of our knowledge, the OTS only permits a 5% discount in an identical transaction. I therefore ask you, are depositors being treated less fairly under a North Carolina regulated transaction where they can get a 15% discount versus a 5% discount? It is plain and obvious: a North Carolina regulated transaction gives the depositors more than an OTS regulated transaction.

2. The next misconception is that insiders are being rewarded "at the expense" of depositors. This simply is not true. In an OTS regulated conversion-acquisition, it is true that the benefits to the insiders (executive management and directors) are more limited than those of a North Carolina regulated transaction. However, to my knowledge, in an OTS regulated transaction, the depositors have never been given an interest rate bonus. In the CCB transaction with Graham Savings, depositors at Graham were given a 1.25 percent interest rate bonus for all their deposits and if they retained their deposits at Graham Savings for an additional year, that interest rate bonus gets increased by an additional one percentage point. How can you say that the depositors of Graham were mistreated in this transaction and would be more fairly treated if OTS regulations were imposed? If this were under the jurisdiction of the OTS, these interest rate bonuses (calculated at an aggregate of approximately $2.1 million) would not have been given to the depositors of Graham Savings. The depositors would have gotten

nothing! To whom then would this $2.1 million be going if the OTS regulated the CCB-Graham transaction? To the acquiror, in our case, CCB. Now you might scratch your head and say why am I here suggesting that CCB not get more out of these transactions than they have? The plain and simple truth is that under North Carolina regulations, in order for these transactions to move forward, the Administrator requires that the depositors, directors, officers, employees and communities must be benefited in order for these transactions to be consummated. In the CCB-Graham transaction, $500,000 in charitable contributions are to be made to Alamance County charities. Over the next five years, an additional $500,000 will be funded by CCB. To our knowledge, no charitable contributions to the communities are given in an OTS regulated transaction. How can you say that the OTS regulations benefit the community? In short, if any of these transactions are to be consummated in the future under OTS regulations, while it is true the directors, officers and employees will get less from the transaction, the real winner will be the acquiring bank holding company. And as one of those potential winners, I am saying to you that that is unfair.

3. To impose the OTS regulations in these transactions eliminates the role of the North Carolina Administrator and completely federalizes these transactions. As such, this legislation is a threat to the dual-banking system and would eliminate any role of the state regulators. As I hope you already understand, any acquisition by a bank holding company must first be approved by the Board of Governors of the Federal Reserve System. If there is to be a merger of the acquiring thrift into a subsidiary bank, then the FDIC must also approve the transaction as well as that of the North Carolina Banking Commissioner and Commission. If the merger involves a national bank, then the Comptroller of the Currency must approve it. I

contend to you that we have enough federal oversight in this process. To now require the FDIC to apply OTS regulations on an issue when there is no safety and soundness rationale whatsoever, is simply high-handed federal involvement.

4. Lastly, the press has done a poor job in reporting the issues surrounding these transactions. The press has appeared to equate the horrible abuses of the 1980s by people such as Charles Keating, et al. with that of those directors and officers of healthy thrifts who have chosen to enter into transactions of this nature. I have already pointed out to you that all constituents to whom the thrift directors owe a duty have benefited in these transactions. Indeed, they have benefited far in excess of what the OTS would permit. What then are some of the depositor-protestors complaining about? They would have you believe and the press has swallowed this hook, line and sinker, that they want "more for the depositors". If that is the case, imposing OTS regulations is going in the wrong direction. The depositors will get less. But truly, what do they want? They want to impose their will on the Board of Directors to force them to convert to stock on their own. These depositors can then invest their available money (only a very small percentage of depositors have the investable cash to take a long-range, long-term risk and buy stock in a stand-alone conversion), purchase that stock and hold it for a couple of years and then sell out the institution at some multiple. In each of the three cases of the transactions consummated by CCB, the Board of Directors of the healthy thrift considered this strategic alternative but considered it too risky. Instead, they chose the merger-conversion where all depositors would be treated the same, and no depositor would have to put his investment money at risk by buying the stock of an illiquid, small, one- or two-office savings institution. And the

depositor-members at those institutions approved the transaction. Instead of converting on their own, they were given the opportunity to purchase stock in CCB Financial Corporation, a widely-traded public corporation with a dividend history and a strong investment performance. They could buy this stock at a discount of 15% from current market. In our transactions, all depositors benefited; in a stand-alone conversion, only a few of the depositors with the wherewithal to buy the stock, to take the investment risk and to have the potential to make a profit in the future are the ones that might benefit. In the end result, the majority of protestors are nothing more than disgruntled investors who want to make more of a personal profit but have clouded the issue by claiming that all depositors are not being treated fairly. The truth of the matter simply will not bear this out.

I hope the foregoing helps educate members of the Committee and the Committee staff on these issues. The legislation is ill-conceived, is not in the best interest of the constituents served by the thrifts who elect to take this strategic alternative of engaging in a transaction known as a merger-conversion or merger-acquisition. And finally, in the consolidation of the thrift industry, an event which is becoming inevitable and is in the best interest of the overall financial community, to eliminate the possibility of state-savings banks converting and merging at the same time is to simply limit the options of healthy thrifts. These business decisions should be left to the board of directors for approval by the members.

Thank you very much for your time and attention.

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TESTIMONY OF JOHN A. ALLISON IV.
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
BB&T FINANCIAL CORPORATION

BEFORE THE U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

REGARDING H. R. 3615, THE MUTUAL CONVERSION ACT

January 20, 1994
Winston-Salem, N. C.

January 20, 1994

Testimony of John A. Allison IV
Chairman and Chief Executive Officer
BB&T Financial Corporation

Mr. Chairman, members of the Committee, ladies and gentlemen. I am pleased to discuss conversion mergers with you today. In doing so, I will describe BB&T Financial Corporation's savings institution acquisition program. I also will discuss why we believe the passage of H.R. 3615 is unnecessary.

BB&T is a community-oriented bank. Our fundamental focus is on providing local retail and commercial banking services through 266 offices in 138 cities and towns in North Carolina. We have total assets of over $8 billion and deposit liabilities of $6.1 billion. We are extremely well capitalized with total stockholders' equity of $698 million. BB&T's total risked based capital is 14.8% of risk-adjusted assets and our leverage ratio is 8.64%.

BB&T believes that banking is about helping people in the communities we serve to buy homes, operate businesses, and save for the future. We provide the financial services that help individuals, families, businesses and non-profit organizations in their day-to-day activities. We offer products such as checking accounts, credit cards, car loans, home mortgages, business loans, insurance, asset management and investment

and trust programs. We have been, I think, accurately described in the press as "less a $7 billion-asset [now over $8 billion] holding company than a collection of autonomous community banks."

In keeping with our community banking philosophy, BB&T's plan has been to focus on expanding its banking services in the Carolinas by combining with other community-oriented institutions. Since 1990, fourteen savings institutions have joined BB&T. Seven of these were either federal or state chartered mutual institutions. We have pending several more state chartered mutual savings institution conversion merger transactions with us, including Home Savings Bank of Albemarle.

Our savings institution acquisitions have been widely acclaimed in the press and, more importantly by our customers as successful -- in large part because BB&T's philosophy is to depend on local management and employees and to invest in the local community. BB&T does not displace the employees and managers who have built the franchise and the customer relationships and served the community for years. We want the employees and management to stay with us because they know the customers. They also know what banking services the people in the community want and need. Thus, they have the know-how to run a bank successfully in that community. We also invest

substantial amounts in the local community and provide consumers with a wider range of financial services at competitive prices.

Like any organization, to keep people, we must pay them, provide them with bonuses when they do a good job, provide for their retirement, and encourage them to invest in us for the long term, so that we can continue to grow and serve our communities effectively. We have a wide range of employee benefit plans, including plans for our employees through which they can buy BB&T stock, as well as stock plans for our managers and executives. These incentives, which are reasonable in amount, are critical to the "more than a bank" attitude necessary to make acquisitions work. In our experience, these incentives also build loyalty. We think they are good business. And we think the result is good for our communities.

Mr. Chairman, in considering H.R. 3615, this Committee is looking at whether conversion mergers are appropriate and fair. We submit that they are. The acquisition of savings institutions is part of the consolidation of the financial services industry. As my testimony will demonstrate, these acquisitions help these institutions compete with other providers of financial services in the local community. They are a desirable and long-accepted technique that is governed by long-established, carefully-crafted rules that we strictly

follow. And they provide real benefits to customers and the community that likely would not be available otherwise. Indeed, we believe the benefits we offer to the depositors and the communities in our transactions are better than that offered under any other alternative.

For these and other reasons, we believe there is no need for legislation such as H.R. 3615. State chartered mutual savings banks have been converting under state law since at least the early 1980's. In North Carolina, the state law governing mutual to stock conversions is substantially the same as the federal law. The North Carolina Administrator of Savings Institutions has been as aggressive, if not more so, than the OTS in scrutinizing these transactions. The depositors are given the opportunity to vote on the transaction, after full disclosure of all of the terms, including benefits offered to the depositors and the community and compensation provided to the directors, officers and employees. And the benefits the Administrator has permitted us to provide to depositors, as well as the compensation provided to the directors and officers, have been carefully reviewed by him to ensure their fairness. To the extent any of these benefits would raise safety and soundness concerns, the FDIC, as well as the Administrator, has the power to object.

If H.R. 3615 were enacted in its current form, the bill could cause a reduction in some of the real benefits we provide the depositors and the community. It also could reduce some of the compensation provided to directors and officers. We believe that any such reduction is unjustified. We also believe the legislation needs to contain an appropriate grandfather date for transactions entered into under clear statutory authority prior to November 22, 1993.

A. The Acquisition of Savings Institutions Allows Institutions to Fulfill their Mission as Providers of Local Financial Services

Conversion mergers are appropriate and desirable options for savings institutions because they permit mutual institutions to compete effectively by affiliating with larger organizations that can provide more resources than otherwise would be available. The officers and directors of savings institutions (both in mutual and stock form) that I have talked to -- and I have talked to a lot of them -- say that their number one problem is being able to provide banking services effectively to their local communities in the face of increasing competition and technological advancement.

Savings institutions originally were established to serve local communities. They provided communities with savings accounts, mortgage loans to build their homes, and

to some extent, consumer loan products. In the early part of this century, few banks provided retail banking services to the average person. Savings institutions were created to fill this unmet need.

Today, many companies provide these services to consumers. A person here in Winston-Salem can open the yellow pages or the local newspaper and find numerous banks, mortgage bankers, consumer finance companies, securities firms and insurance companies offering savings and investment accounts, certificates of deposit, mortgage and consumer loans of all types, plus insurance, annuities, mutual funds and other investment products. These are not just companies within North Carolina. By direct mail and telephone, mortgage companies, credit card companies, and finance companies market their wares from distant states. Because many of these competitors are much larger than mutual savings institutions, they have achieved the economies of scale from volume and technology to provide these products at less cost than most savings institutions can provide.

In contrast, many savings institutions, whether in mutual or stock form, can offer only a limited range of products and services, and they do not have the management or financial resources to broaden their product line. Even if these institutions do manage to diversify, their size doesn't allow them to achieve the economies of scale

necessary to do it economically. But their mission continues to be to serve their local communities. How can they do that in the face of competition from banks and other financial services companies? They need to add loan and deposit products and other consumer services, increase their computer capacity, upgrade other technological capabilities, refurbish offices and install ATM's. They need help with advertising, and processing loans, checks and payments more efficiently. They need to attract younger managers for the institution. In short, what they need is financial muscle and expertise to compete successfully against the larger out-of-town companies.

Savings institutions' directors tell me, after thoroughly analyzing their options and listening carefully to their financial and other advisors, that remaining a mutual or converting to stock form on a stand alone basis will not, by itself, make them more competitive. The most attractive option for many of these institutions is to affiliate with a larger institution, such as BB&T. Such an affiliation increases their financial resources and allows them to offer a wider variety of products and services to their customers at competitive prices while maintaining local involvement in the community. Those are important goals that, if achieved, will benefit the community.

I want to pause here and make an observation about the process through which the mutual institutions -- including Home Savings -- have considered their future. While we are not of course invited to attend every board meeting at which our proposed transaction is discussed, those I have attended demonstrate that the boards of directors are careful, deliberate and fair in considering their strategic future and alternatives. I have been impressed by the depth of analysis and the extended period of time over which these institutions' managers and directors have considered their future. Quite frankly, many of them believe that there is no future for the thrift industry and that has influenced their judgment about their strategic course. Others have been concerned about the competitive factors mentioned above, while others have management succession concerns or interest rate risk and/or diversification concerns. For example, the Board of Directors of Citizens Savings Bank of Mooresville, our most recent transaction, was motivated to affiliate with BB&T primarily because of competitive concerns. A copy of the reasons why Citizens Savings entered into an agreement with us, as set forth in the Citizens Savings proxy statement, is attached to this testimony as Exhibit 1.

But whatever the issue in any particular board room, these are thoughtful people with integrity who have

reached a carefully considered decision after input from independent, professional advisors. After watching this process over the last several years, I am convinced that the directors and officers have distinguished themselves in acting on behalf of the institution and in the best interests of the customers, employees and communities the institution serves.

Some of the press coverage about the process and the motivations of officers and directors of these savings institutions, particularly those I know well, has been grossly inaccurate. While I understand why some have painted the picture the way they have, particularly in light of the insider abuses in the thrift industry in the 1980s, I believe that many recent reports of alleged abuses in these transactions have been exaggerated, in part because it looks like the reporters do not fully understand the transactions or the process. The directors and officers I have dealt with are honorable and well-intentioned human beings wrestling with extremely difficult decisions. I would urge this Committee, therefore, before acting, to study the record carefully for itself and not rely on third-hand and fourth-hand reports.

We also should not forget the disaster that hit savings institutions in the 1980's. When interest rates rose in the late 1970's and stayed high through the early

1980's, savings institutions were stuck with low-yielding 30 year home mortgages. Thrifts bled red ink and many became insolvent. The thrift industry tried to grow out of the problem on its own and move into commercial and construction lending, a business that they clearly were not equipped to handle. It cost taxpayers billions of dollars.

Now that interest rates have dropped to record lows, the industry has stabilized. But the disaster could happen again if interest rates climb. Many mutual savings institutions still have significant interest rate risk exposure in their loan portfolios and thus again will be financially vulnerable when interest rates rise.

Mutual to stock conversions, and particularly conversions combined with acquisitions by healthy bank holding companies, provide a way to limit the risk of future insolvency from an upward turn in interest rates. Unlike savings institutions, strong, more diversified, commercial banking organizations such as BB&T are managed to minimize undue exposure to interest rate risk. Thus, affiliating with such an organization provides the financial strength and managerial expertise when interest rates fluctuates. And, most importantly, these acquisitions have improved the efficient and effective delivery of financial services to local communities.

B. Conversion Mergers are a Legitimate, Legal Option Governed by Long-Established Rules

The rules governing conversions of mutual savings institutions adopted by North Carolina and other states and by the federal government are the result of more than 45 years of careful legislative and administrative consideration of the available options. Let me summarize this history briefly, because it puts H.R. 3615 in a very different perspective.

In the past, most savings institutions were organized in mutual form, and the federal government and most states did not charter stock savings and loan associations. For most of this century, the industry's function has been to gather deposits and to lend those funds primarily to individuals in the form of long-term, fixed-rate home mortgage loans. These mutual institutions had no stockholders or owners in the traditional sense. In most states, depositors were allowed to elect the directors and to receive a distribution of a portion of the net worth in the unlikely event of a solvent liquidation. As noted by the United States Supreme Court in 1955, mutual institutions almost never underwent solvent liquidations, and depositors were essentially customers of the institutions who had no real expectations of receiving the net worth.

Beginning in the 1940's, state and federal governments began to consider methods for converting mutual savings institutions to stock form. In 1948, the federal government did not charter stock savings and loan associations or savings banks, and so the conversion process for a federal savings and loan association prior to 1975 involved conversion to a state chartered institution followed by a conversion to stock form under state law. A few conversions occurred between 1948 and 1955. In 1955, the Federal Home Loan Bank Board placed a moratorium on conversions while it studied the matter.

In 1961, the FHLBB again permitted federal mutual savings institutions to convert to stock form. At that time, mutual conversions involved free stock distributions to depositors. What happened, unfortunately, was that wealthy individuals without any historical relationship with the institution or connection to the community placed very large deposits in anticipation of conversions and free stock distributions. The FHLBB reimposed its moratorium in 1963, based on its concern that new depositors were receiving windfalls and that shifts of large amounts of deposits threatened the stability of savings institutions.

The FHLBB conducted three lengthy studies of mutual to stock conversions during the 1960's. Upon consideration of the findings of the studies, the FHLBB in

1972 approved test conversions of six savings associations and in 1973 published proposed conversion regulations. The proposed FHLBB regulations called for free distributions of stock to depositors.

The Internal Revenue Service then got involved. According to the IRS, free stock would be a taxable distribution to depositors, and the conversion would not be a tax-free reorganization to the savings institution unless depositors had the same interest in the savings institution -- consisting of their deposit and the right to a distribution of the net worth in the unlikely event of a solvent liquidation -- that they had before the conversion.

Congress was also very concerned about the conversion method proposed by the FHLBB. Congress held hearings during the summer of 1973 on mutual-to-stock conversions. At the conclusion of the 1973 hearings, Congress authorized the FHLBB to proceed with its pending test conversions, but imposed a one-year moratorium on the agency's approval of other conversion applications.

In response to those hearings, and based on further thought, the FHLBB withdrew its original proposal and adopted instead conversion rules that did <u>not</u> give free stock to depositors.

The key elements of the new rules were: (i) a continuation of all deposit accounts in the converted

savings institution; (ii) the sale of stock at full appraised market value; (iii) no distribution of cash or free stock to depositors; (iv) the grant of subscription rights on a pre-emptive basis to depositors to purchase stock issued in the conversion; (v) creation of a "liquidation account," a pro rata portion of which would be paid to depositors in the unlikely event of a future solvent liquidation; (vi) a depositor vote on the plan of conversion; and (vii) government approval of each proposed conversion on a case-by-case basis.

The new rules were designed to give the depositors the same interest in the converted savings institution that they had before, while at the same time increasing the capital of savings institutions and preventing shifts of deposits among savings institutions in anticipation of free stock distributions. The rules worked then, and continue to work, as follows. The savings association is appraised by an independent appraiser and its fair market value determined. A plan of conversion is approved by the directors and sent to the government for approval. Depositors then vote on the conversion plan. If the government and depositors approve the plan, an amount of stock equal to the appraised value is offered for sale. Depositors, employees and managers are offered the first chance to buy the stock. Through the liquidation account, the depositors who keep their deposits at the institution

after the conversion are given the right to receive a portion (which declines over time as deposits are withdrawn) of the pre-conversion net worth in the unlikely event that the converted institution or its successor ever liquidates while solvent.

After the conversion, depositors have what they had before: a deposit, and for as long as they maintain the deposit, the pro rata right to share in the pre-conversion net worth of the institution pursuant to the liquidation account. Depositors also received something they never had before: the right to share in the profits of the organization. But the depositors pay for that new right by purchasing, at full market value, stock issued in the conversion.

Congress conducted hearings on the conversion issue again in 1974. After reviewing the new rules, Congress in October 1974 authorized the FHLBB to process 49 additional "test" conversion applications and to approve conversions generally after June 1976.

By the early 1980's the thrift industry encountered financial difficulties because of high interest rates and greater competition. It was believed that converting savings associations would need to merge with other institutions to survive and regain their former strength. In recognition of the capital needs of the thrift industry, the FHLBB revised its conversion rules in 1982

and 1983 to, among other things, permit the acquisition of a converting savings institutions by existing holding companies in conversion merger transactions. In such conversion merger transactions (or more precisely, conversion acquisition transactions), the depositors of the converting savings institution receive subscription rights to purchase the shares of the acquiring holding company, but otherwise the process is substantially the same as under the 1974 rule.

Until 1989, these conversion acquisition transactions generally involved acquisitions of savings institutions by existing savings and loan holding companies, rather than by bank holding companies. As the condition of the thrift industry continued to decline, however, it became clear that savings institutions must be allowed to combine with banks in order to bring greater financial and managerial resources into the savings institutions.

Thus, Congress authorized bank holding companies to acquire savings institutions when it enacted FIRREA in 1989. It also authorized bank holding companies to merge the acquired institution into the bank subsidiary of the bank holding company. In adopting these amendments, Congress endorsed the method of conversion adopted by state and federal regulators over the preceding years and again chose to reject the earlier proposal to distribute

free stock. In the legislative history leading up to FIRREA, Congress noted the importance of conversions in rebuilding the capital of the industry and added: "A depositor is not entitled to a mandatory distribution from an institution's net worth or surplus under any other circumstances including in connection with the conversion from mutual to stock form." In enacting FDICIA in 1991, Congress further simplified the process by which a savings institution can be acquired and merged into a commercial bank.

Since 1948, over a thousand mutual savings institutions have converted to stock form under state or federal laws. These conversions have raised tens of billions of dollars in new equity capital through sales of stock to depositors, employees and the general public. This new capital, in turn, reduces the risk to the FDIC and taxpayers, while allowing institutions to grow and improve the services they provide to their communities. In BB&T's case, it also has provided over $33 million in additional tax liabilities from the recapture of the acquired institution's bad debt reserve into income upon its merger into Branch Bank.

State and Federal courts have carefully considered and rejected challenges to conversions of mutual savings institutions in both the stand alone as well as the conversion acquisition context conducted under state or

federal laws similar to the North Carolina statute. Federal Courts of Appeals in the Fourth Circuit (which includes North Carolina), and the First, Ninth, Tenth and Eleventh Circuits, as well as State courts in Ohio, Maine, New York, and Pennsylvania, have all upheld mutual conversions against the same types of questions that are now before this Committee. Specifically, these courts ruled that the interests of depositors are fully and adequately protected by continuation of their deposits, the right to purchase stock at fair market value, and the right to a portion of the net worth in the unlikely event of a future solvent liquidation of the converted institution. These courts also have concluded that depositors do not have a right to free or discounted stock or to purchase the stock of the thrift rather than the acquiring holding company.

C. North Carolina Conversion Mergers Have Provided Real Benefits to Depositors, Customers and the Community

The current North Carolina mutual to stock conversion rules are modeled on the current federal regulations and vary from them only in nonmaterial ways. Thus, like federal law, North Carolina law protects depositors by requiring: (i) a continuation of all deposit accounts in the converted savings institution; (ii) the offering of the institution's stock to depositors

and others in an amount equal to the institution's appraised value; (iii) no distribution of free stock to depositors; (iv) creation of the "liquidation account;" (v) a depositor vote on the plan of conversion; and (vi) government approval of each proposed conversion on a case-by-case basis. As with the OTS regulations, the North Carolina regulations are designed to give the depositors the same interest in the converted savings institution that they had before, while at the same time providing new capital.

In addition, the North Carolina Administrator is required under North Carolina law to find that the transaction is fair to the depositors, customers and the communities to be served, and that no person, whether member, employee or otherwise will receive any inequitable gain or advantage by reason of the conversion. In our experience with the Administrator, he has been aggressive in policing each proposed transaction to make sure that the evidence supports such findings. For example, in each application we have filed with the Administrator, he has had several rounds of numerous and extensive comments and questions concerning the substantive terms of the transaction, including comments going to the nature and amount of the benefits provided to the depositors and the communities, the compensation provided to the directors and officers, and many smaller details that traditionally

have not been as carefully reviewed. He also has required us, as did the OTS in our federal transactions, to use the funds raised in the offerings to purchase the stock of the converting savings institution. The proceeds are then contributed to the capital of the institution.

He also has been strict in seeking full and complete disclosure to the depositors in the proxy solicitation materials seeking the votes of the depositors on the plan of conversion. As I noted before, BB&T has completed seven conversion mergers under the federal conversion regulations and has completed two such transactions under state law, with others now pending, including our proposed acquisition of Home Savings. In our experience, the Administrator has sought more disclosure concerning benefits, particularly those to the directors and officers, than has the OTS. Such disclosure has included clear, highlighted areas intended to call such benefits to the attention of the depositors, and numerous cross-references throughout the document to ensure that the reader is reminded about the benefits.

The Administrator also requires something that the SEC considered and rejected in a different context as excessive disclosure: separate stock valuation tables showing the future potential value of the stock incentive award, and the value of stock options granted. (See an example of this disclosure which is attached as Exhibit

2). We have had extensive discussions with the Administrator's office about how to present such information, and such disclosure has been included, to our knowledge, in other transactions approved by the Administrator.

BB&T has enthusiastically supported the concept of full and complete disclosure to the depositors. We believe that this approach serves the best long-term interests of BB&T and the savings institution, by building better customer relations and enhancing confidence in the combined institution.

Further, because the Administrator has an understanding of the needs of our local communities, he has permitted certain benefits to be offered to the depositors and the community. Many of these benefits historically have not been offered in OTS transactions. These benefits have been allowed on a case by case basis and vary from transaction to transaction. Two of the key benefits that BB&T has been able to offer in acquisitions approved by the Administrator are a higher discount on the BB&T stock offered to the depositors and an interest rate bonus on deposits maintained at the savings institution. As a result, we believe the benefits we offer depositors and the community in our transactions are broader than those available in other conversion mergers, stand alone

conversions or if the savings institution remained in mutual form.

The stock purchase discount program has been employed by BB&T since 1991 in its first federal conversion acquisition. Indeed, we were the first bank to present this program to the OTS as a benefit to depositors. That program provided that those who chose to purchase BB&T stock could do so at a 5% discount off of the then-market price of the stock. The discount was intended to provide the potential for greater benefit to those depositors who chose to participate as stockholders in BB&T, and to encourage purchases by depositors and members of the community.

We understand that the OTS has been reluctant to permit a discount in excess of 5%. Frankly, we disagree with the OTS and believe that a discount in excess of 5% is fair and appropriate. In any event, the Administrator has shown greater flexibility and has approved discounts of up to 15% in each of the North Carolina conversion mergers that we have consummated. This 15% discount also is offered in BB&T's pending acquisitions, including its proposed acquisition of Home Savings of Albemarle.

Let me note that we do not need the capital required to be raised in these transactions. BB&T already is extremely well capitalized. Further, the 15% discount is dilutive to us. But the discounts do benefit the

depositors. And, as noted, we use the proceeds to purchase the stock of the savings institution and it becomes part of the institution's net worth.

The interest rate bonus has been a one-time payment to depositors and has been designed to reward those who have kept deposits at the savings institution being acquired. This bonus was not part of our federal conversions. We have found the bonus is well received at the institution. It creates goodwill in a transaction where often there is the risk of depositor outflows based on fear that an out of town acquiror will ignore community needs. The bonus gives us a better opportunity to make our case to the depositors that BB&T is a community oriented bank.

Of course, other benefits are provided as well. After the acquisition, the institution can expand its products and services (which are further expanded after the institution's merger into Branch Bank). These products include a full range of deposit products (including a "life-line" banking account), mortgage, consumer and commercial loan products, mutual funds and other securities services, insurance services, and asset management and trust services. Because the institution is affiliated with BB&T, customers also gain the ability to bank at branches and ATM's throughout the Carolinas.

To further demonstrate our commitment to investing in and improving the communities in which we operate, we also commit substantial funds (in recent transactions, up to 10% of the appraised value of the acquired savings institution) to charitable trusts. Funds from these trusts are distributed in the savings institution's community to charitable organizations recommended by the institution's directors. These funds are not deducted from the appraised value of the institution. Therefore, there is no reduction in stock available for purchase by the depositors. These are additional funds BB&T commits to invest in the community.

D. The Compensation Provided to the Institution's Directors, Officers and Employees is Appropriate and Consistent with Sound Banking Practices

With this background, I would like to address directly the question of the nature and level of compensation provided to the directors, officers and employees of acquired savings institutions.

As I indicated earlier, BB&T's bread and butter business is providing retail and commercial banking services in the local communities in which our banks have offices. We have long recognized that the acquisition of a locally based institution can only be really successful -- from both the customers' and our standpoint -- if we

retain and expand the savings institution's traditional customer base. We have been doing bank and savings institution acquisitions since the late 1970's and have found this to be true every single time.

These customer relationships have been established, expanded and nurtured by the institution's directors, officers and employees. BB&T believes that the best way to keep these customers happy after the transaction is to make certain that they continue to receive quality service from the same talented people they have put their trust in over the years. Thus, BB&T views it as critical to its success that BB&T retain, and secure for the future, the services of all the institution's personnel from top to bottom -- directors, officers and all employees.

For this reason, BB&T asks the directors of every savings institution it acquires to continue to direct and guide the savings institution until its operations can be consolidated with BB&T. After that, BB&T asks that the directors serve on a local (and in most cases pre-existing) advisory board. The individuals who serve on these boards provide valuable service to BB&T through their business contacts in the community and expertise in identifying the credit and service needs in the community. They also provide extraordinary goodwill in the community and to our new depositors.

BB&T also asks the senior management of the savings institution to enter into employment agreements to ensure continuity in the institution's day-to-day operations.

BB&T further commits to retain all the employees of the savings institution -- no employee of a savings institution loses his or her job as a result of the institution being acquired by BB&T. BB&T knows that keeping these "friendly faces" may be the most crucial element of all in convincing customers to trust BB&T to be their bank and to accept BB&T into the community. We find this employee commitment is often what makes the difference in distinguishing us from other acquirors.

BB&T has found that these directors, officers and employees have in fact provided invaluable services to BB&T after the acquisition. Indeed, we believe they are the reason our acquisition program has been so successful over the last several years.

It also is a fact of life that the acquisition process involves fundamental changes in human dynamics and responsibilities. Being acquired can bring enormous stress, while also presenting huge challenges to those at the institution that are forced to learn a new way of doing business, and to learn all the new products and services offered by BB&T. We also ask these people to provide us strong assurances that they will stay through the transition and for a long period thereafter, serving

the customers and the communities. While the board of directors of the savings institution continues to serve BB&T, we recognize that they no longer have the same role, and we effectively are asking them to revamp the approach with which they serve. The same is even more true with management and the employees. Each of the savings institutions we have acquired has been profitable and that success is in significant part due to the skill and efforts of management and the employees. Thus, we insist credit decisions continue to be made at the local level. However, we also ask the institution's management to expand their efforts significantly through a different organization and culture.

For these reasons, BB&T believes that it is critical from the outset that we recognize and appreciate these people. BB&T is an employee oriented bank and has invested millions of dollars in training and showing the employees that we care. This attitude extends to those employed at the institutions we have acquired. Part of that attitude is conveyed through a generous compensation program designed with care to provide maximum incentives to perform with a view toward the interests of the overall organization. Those incentives in the case of acquired institutions often include modest salary increases and stock incentive awards. In some cases, the salary increases are provided to recognize that the banking

industry generally provides higher salaries than those provided in small mutual savings institutions. In other cases, it simply rewards, as I have described, what we expect to be a substantial commitment of time, energy, enthusiasm and effort in a stressful situation.

The stock incentive awards are provided for the same reason that every stock company believes in stock incentive awards -- to ensure that the employees consider the overall best interests of the organization and its stockholders, and to reorient their thinking toward the long-term future. We find these stock incentive awards particularly important at mutual institutions, where of course historically the notion of equity and stock performance has not been part of the equation.

Let me emphasize that not one penny of compensation is provided to any director, officer or employee unless and until they perform services to BB&T after the acquisition. No payments are made as part of the acquisition, and no promises are made other than through employment arrangements and other agreements fully disclosed to the regulators and the depositors. If the director, officer or employee chooses not to stay with BB&T following the acquisition, he or she receives nothing. The compensation program is designed, in other words, to work the way every corporate incentive compensation program is supposed to work: as "golden

handcuffs" to further BB&T's goal of encouraging the directors, officers and employees to stay with BB&T for an extended period of time after the acquisition, and to continue to perform at the highest levels in a new role.

Thus, the executive officers who enter into employment agreements with BB&T receive salary increases, but these increases are relatively modest -- generally only being 15% more than their compensation at the time the acquisition is agreed to by the savings institution. By the way, this is no different than that offered to the officers of the OTS-regulated institutions BB&T has acquired.

In addition, BB&T agrees to provide stock-based compensation to the savings institution personnel in the form of restricted stock, stock options and participation in an ESOP to further encourage long-term retention of directors, officers and employees. None of these incentive awards are available immediately to any director, officer or employee but as noted above, require service to BB&T over a considerable period of time.

The stock-based compensation (with the exception of the shares of stock purchased by the ESOP for all employees, which is consistent with both federal and North Carolina law) is not taken out of the stock available for purchase by the depositors and community residents. Further, the stock options, which are granted at BB&T's

market price on the date of grant, only achieve value if BB&T's stock price increases, and this will only happen if BB&T is successful in providing quality service to its customers, including the customers in the community of the acquired savings institution. And if BB&T's stock price does increase, the depositors and community residents who bought BB&T stock in the offerings will profit as well.

BB&T also has offered stock-based compensation to the directors, officers and employees of the OTS-regulated entities BB&T has acquired, but in lower amounts.

E. BB&T's Savings Institution Acquisitions Have Been Overwhelmingly Supported by Customers and the Communities

BB&T's savings institution acquisitions have been overwhelmingly supported by the institutions' customers, after consideration of the detailed disclosure contained in the proxy statement. Indeed, both of BB&T's completed North Carolina mutual savings bank transactions have received over 79% of the total outstanding votes entitled to be cast - a higher "yes" vote than in any of our OTS transactions. (See Exhibit 3). In the other five conversion merger transactions, the "yes" vote ranged from 62% to 73% of the total outstanding votes. In all nine of our completed conversion merger transactions, the "no" votes have ranged from a mere 1% to 5.75% of the total outstanding votes. This overwhelming support BB&T has

received in its conversion mergers reflects the actual votes of the depositors received in response to the mailing of the solicitation materials to them. We do not and will not use "general" (running) proxies provided by customers when they open their accounts.

The stock offerings also have been heavily subscribed by the depositors. (See Exhibit 4). Indeed, our most recent offering was sold out at the depositor level. These numbers do not show any widespread discontent over these transactions. Rather, they show enthusiastic depositor support after complete disclosure of all the proposed benefits and compensation.

This is not to say that we do not recognize depositor opposition to our transactions. In 1991, in the first conversion merger we consummated, we had one depositor who was so unhappy with the transaction that he filed a petition in the United States Court of Appeals for the Fourth Circuit, arguing, among other things, that all of the depositors were entitled to receive a pro rata share of the net worth of his institution. The Fourth Circuit considered his arguments and concluded that they were not justified by law or policy, and the petition was dismissed.

In the most recent transaction we consummated, similar concerns were expressed by a few depositors who believed that the institution was making the wrong

decision. We listened carefully to these views and, quite honestly, have attempted to tailor the terms of our transactions to address as best we can the concerns of all depositors. The transaction, by the way, was overwhelmingly approved.

Similarly, we are aware of opposition in the Home Savings transaction. We do not take such opposition lightly. We have and will continue to do the best we can to discuss the issues as fairly and fully as we can and let the depositors decide for themselves.

F. Legislation is Unnecessary and Unjustified

Based on the foregoing, we believe there is no need for legislation such as H.R. 3615. As I have discussed with you today, the North Carolina law governing mutual to stock conversions is substantially the same as the federal law. The Administrator has been as aggressive, if not more so, than the OTS in scrutinizing these transactions. The depositors are given the opportunity to vote on the transaction, after full disclosure of all of the terms, including benefits offered to the depositors and the community and compensation provided to the directors, officers and employees. And the benefits the North Carolina Administrator has permitted us to provide to depositors, as well as the compensation provided to the directors and officers, have been scrutinized to ensure

their fairness. To the extent any of these benefits would raise safety and soundness concerns, the FDIC, as well as the Administrator, has the power to object.

On the other hand, the North Carolina transactions have provided depositors and the community with real benefits, including a higher discount on the BB&T stock offered to the depositors in the transaction, an interest rate bonus on deposits, a broad range of banking products and services, convenient branch locations and the commitment of substantial funds to a charitable trust to be used for community projects.

If H.R. 3615 were enacted in its current form, the bill could cause a reduction in some of these real benefits we provide the depositors and the community. It also could reduce some of the compensation provided to directors and officers. We believe that any such reduction is unjustified. We also believe, should legislation be enacted, that it needs to contain an appropriate grandfather date for transactions entered into under clear statutory authority prior to November 22, 1993.

G. Conclusion

As I have outlined for you today, the combination of mutual savings institutions with strong banking organizations such as BB&T is appropriate and furthers sound policy. The terms of these transactions have been

fair. The transactions have been considered and authorized by Congress several time and by the North Carolina legislature. These combinations have been found to be a sound and important means by which community institutions are strengthened, both in capital and in access to additional managerial abilities, so that they can provide expanded services on a cost-effective basis to the communities they serve.

BB&T's philosophy, which has been widely acclaimed, has been to preserve local involvement of the institution's management and employees, while providing the community with the types of expanded, modern financial services available and desired by consumers today at an affordable cost. We believe our program accomplishes those goals. And the depositors have enthusiastically agreed. Thus, in our view, no additional legislation is necessary.

Thank you very much.

Exhibit 1

Background of and Reasons for the Conversion Merger

The primary business of Citizens Savings has been to seek consumer savings deposits and to make home loans in Iredell County, both of which Citizens Savings' Board of Directors believes it has done successfully. However, Citizens Savings' Board of Directors recognized that circumstances were beginning to change. The market area served by Citizens Savings is relatively small and that market has become subject to increasing competitive pressures, especially from larger financial institutions with operations in Charlotte, North Carolina. These larger institutions have the experience and the resources needed to offer customers not only those financial services which Citizens Savings can offer, but also other financial services as well. In addition, the new regulatory requirements imposed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and the 1991 Banking Law and the widespread negative publicity resulting from the failures of savings institutions in other places have made it more difficult for small traditional savings institutions such as Citizens Savings to compete against larger institutions. Finally, Citizens Savings' President began to experience health problems, making management succession a potential issue for Citizens Savings where Mr. Putnam is the sole executive officer. The Board of Directors decided, therefore, that Citizens Savings should reassess its strengths, weaknesses and strategic alternatives in light of all these changing circumstances.

The Board of Directors assessed many factors, including Citizens Savings' management, its facilities and its other resources; the prospects for expansion and change by Citizens Savings; and, most significantly, the mission of Citizens Savings and the needs of its members, its employees and the communities it serves. With the assistance of a business advisor, Citizens Savings then evaluated each of the strategic alternatives available to it. The first strategic alternative considered by Citizens Savings was to remain an independent mutual institution engaged primarily in seeking consumer deposits and making home loans in the Iredell County area. The Board recognized, however, that intense competition for the home loan business would continue to come from larger financial institutions with operations in nearby Charlotte, North Carolina. Also, the Iredell County area is at the beginning of a time of great growth. The Board of Directors became concerned that as an independent company, Citizens Savings would not be able to compete as successfully in such an environment as it would in partnership with a larger, more sophisticated financial services company.

In addition, the home loan business has changed in recent years. Traditionally, Citizens Savings and most other savings institutions held in their own portfolio the majority of the loans they originated. During the last eight years, Citizens Savings has not sold any of its loans. Many thrifts and most other savings institutions today have ceased holding loans in their portfolio. Instead, they serve primarily as originators and packagers of home loans, with those loans then being transferred or sold to secondary marketing agencies. The existence of the secondary mortgage market and increased competition to originate home loans from banks, brokers, mortgage bankers and others, combined with the unregulated competition for deposits from banks, money market funds, credit unions, investment brokers and others leaves traditional thrifts performing functions that are no longer needed in the sense in which they originally were. Also, competition has resulted in and will continue to result in decreased profitability of home-mortgage lending. Thus, the revenues which Citizens Savings could expect to generate from its market area if it became an originator and packager of home loans probably would not be sufficient to sustain the long-term profitability of Citizens Savings.

Another perceived difficulty with remaining a small mutual institution is that Citizens Savings is not growing; its customer base is aging; its product offerings are limited; and it needs to make major improvements to its offices and locations; all at a time when several aggressive new competitors have entered

its market area. In order to attract new customers and change these trends, the Board of Directors concluded that it would be necessary to begin offering customers a wider range of financial services, such as those which are available currently from larger competitors. For a small institution to accomplish this product diversification on its own would require a new investment of resources and would entail substantial risk as well. Taking away management and financial resources from traditional lines of business in order to manage and fund new ventures was not considered to be the wisest or best alternative for Citizens Savings.

The Board of Directors also considered the possibility of a "stand-alone" conversion. In a stand-alone conversion, Citizens Savings would convert from a mutual institution to stock form of ownership, and the stock of Citizens Savings would be offered for sale initially to its members and, possibly, also to community residents and to the public in general. The sale of stock, if successful, would generate capital for Citizens Savings to use. To succeed in raising that capital, however, investors would have to subscribe to the initial public stock offering in sufficient numbers. The prospects for attracting sufficient interest in such stock subscriptions were considered to be uncertain. Also, the Board of Directors observed that financial institution stocks currently are trading at high prices because of favorable conditions, including low interest rates, which may not continue. The stock of small thrifts, moreover, bear an additional investment risk because there is a limited market for such stock. Investors who wanted or needed to sell their shares might not be able to do so easily or quickly. Given the limited market for the stock of small thrift institutions, the Board of Directors concluded that it would be unwise to promote the purchase of Citizens Savings stock by its members and others in the Iredell County community.

The Board of Directors also considered the possibility that a substantial part of an initial stock offering by Citizens Savings might be purchased by professional investors. Such persons probably would not be familiar with Iredell County and would have no loyalty to Citizens Savings or to the community and its needs. The mission of Citizens Savings has been to promote thrift and home ownership in Iredell County, and this mission would not be served by the sale of stock to such professional investors.

Most importantly, however, the Board of Directors believes that a stand-alone conversion would not help Citizens Savings meet the specific challenges facing it. While a stand-alone conversion would provide additional capital which could be used to add the management and technological resources necessary for Citizens Savings to begin providing a wider range of financial services, the Board of Directors believes that a significant risk exists in undertaking extensive diversification of financial services by a small independent institution which could not take advantage of economies of scale. Nor would it help Citizens Savings generate sufficient mortgage volume to become a successful originator and packager of loans to be sold in the secondary market. The major advantage of a stand-alone conversion is that it allows mutual institutions to raise capital, but Citizens Savings' capital currently substantially exceeds the requirements imposed by its regulators.

Lastly, the Board of Directors considered a conversion merger. The Board concluded that a conversion merger with a larger institution which has compatible operating and service philosophies would provide the greatest benefits to all of Citizens Savings' constituencies, with the lowest risk. A conversion merger would allow Citizens Savings to continue its traditional services in its existing market area and, at the same time, it would bring to Citizens Savings the resources needed to provide new services to members. With a conversion merger, Citizens Savings would not bear the financial risk of diversification. The Board of Directors therefore decided that a conversion merger was the best strategic alternative for Citizens Savings.

The next step was to evaluate the interest of other financial institutions in a conversion merger with Citizens Savings. Preliminary discussions were held with several institutions, including BB&T Financial. BB&T Financial made a proposal to the Board of Directors which the Board reviewed and analyzed. The Board considered the financial condition of BB&T Financial, its past performance, its market position, its operating and management philosophies and other related matters in comparison to the proposals and characteristics of other financial institutions. The Board of Directors determined that BB&T Financial's values and philosophies concerning its business operations, its customers, its employees, and the communities it serves are most similar to those of Citizens Savings. Specifically, the Board of Directors believes that BB&T Financial will provide the best opportunities for Citizens Savings employees and is most committed to

continuing Citizens Savings' tradition of residential finance. In addition, the Board found BB&T Financial and its management to be highly competent and compatible with the management of Citizens Savings. Finally, the Board of Directors was impressed with BB&T Financial's sincere commitment to and experience in acquisitions of thrift institutions. The Board of Directors believes that BB&T Financial has shown a history of adding new services, hiring additional people and adding facilities in communities in which it has acquired savings institutions.

A conversion merger with BB&T Financial is believed to best address the specific challenges faced by Citizens Savings in structuring its long-term future. The proposed transaction is believed to be consistent with the promotion of thrift and home ownership in Iredell County, Citizens Savings' traditional strength. By combining with BB&T Financial, the Board of Directors expects that Citizens Savings will gain the opportunity to offer a wider range of services, thus making Citizens Savings a stronger competitor against other financial institutions. The Board of Directors also expects that a conversion merger with BB&T Financial will provide stability and enhanced career opportunities for Citizens Savings' employees at all levels, including increased training, job security, benefits and opportunities for advancement.

Citizens Savings and BB&T Financial engaged in detailed negotiations regarding the terms and conditions of the proposed combination. They were able to successfully conclude those negotiations with an agreement on the terms of the proposed acquisition and, on April 28, 1993, the Board of Directors unanimously approved the resulting Plan of Conversion and the Reorganization Agreement.

Under the terms of the Reorganization Agreement and Plan of Conversion, BB&T Financial will offer substantial benefits to all constituencies of Citizens Savings. Citizens Savings' members and the Iredell County community are expected to benefit from expanded services offered by the larger, combined organization, including an automated teller machine and full service banking. The combination will mean that Citizens Savings can offer these products and services and effectively meet increasing competitive financial conditions in the financial services industry while continuing to attract and retain qualified personnel. Under the terms of the Reorganization Agreement and Plan of Conversion, Eligible Member Subscribers and Voting Members of Citizens Savings and other persons in Iredell County will have the opportunity (but not the obligation) to purchase stock of BB&T Financial at discounts below its market price. (See "THE OFFERINGS—General—Purchase Price"). As part of the Conversion Merger, BB&T Financial has agreed to provide charitable contributions to the local community in the amount of $600,000, which equals 10% of the Appraised Value of Citizens Savings, over a five-year period, which will be distributed at the direction of the individuals who currently constitute Citizens Savings' Board of Directors. Finally, Eligible Member Subscribers will receive a 1% bonus on qualifying deposits within 30 days after the consummation of the Conversion and Acquisition. (See "ADDITIONAL BENEFITS TO BE OFFERED BY BB&T FINANCIAL—Community Benefits—Deposit Bonus" in this Annex I).

The employees, officers and directors of Citizens Savings will benefit as well. BB&T Financial has promised that all employees and officers of Citizens Savings will receive comparable positions after the Acquisition and the Merger in Citizens Savings' primary market area, with no decrease in salary. BB&T Financial will provide an employee stock ownership plan for the benefit of Citizens Savings' employees, a special bonus of one month's salary and other employee benefits. Directors will receive certain benefits, including awards of restricted stock and stock options for shares of BB&T Financial Common Stock, in exchange for serving on a BB&T Financial regional advisory board in their local community. (See "BENEFITS TO BE OFFERED BY BB&T FINANCIAL TO DIRECTORS AND OFFICERS OF CITIZENS SAVINGS" and "ADDITIONAL BENEFITS TO BE OFFERED BY BB&T FINANCIAL—Benefits to All Employees" in this Annex I).

The Board of Directors considered whether the expected benefits to officers and directors in connection with the Conversion Merger would be excessive or improper. After reviewing all relevant terms, and based on consultation with BB&T Financial, the Board of Directors believes that such benefits are appropriate both as recognition of the officers' and directors' past service to Citizens Savings and as compensation for their future services to BB&T Financial. The Board additionally concluded that the Conversion Merger was the best way for Citizens Savings to serve the future needs of its members, customers and employees and that it

is the best way for Citizens Savings to continue to promote thrift and home ownership in Iredell County, North Carolina. Accordingly, the Board of Directors recommends that Voting Members vote in favor of the Plan of Conversion.

Exhibit 2

BENEFITS TO BE OFFERED BY BB&T FINANCIAL TO DIRECTORS AND OFFICERS OF CITIZENS SAVINGS

The Reorganization Agreement provides that, as a condition to consummation of the Acquisition, BB&T Financial shall have entered into agreements and/or provided for certain arrangements satisfactory to BB&T Financial and Citizens Savings, which shall be effective upon consummation of the Conversion and the Acquisition, with respect to certain officers, directors and employees of Citizens Savings.

This section and the following section summarize the benefits BB&T Financial anticipates providing to directors and officers, as well as to Citizens Savings' employees and the communities served by Citizens Savings. For a discussion of certain additional benefits which may arise out of the Conversion Merger, see "THE PLAN OF CONVERSION AND THE REORGANIZATION AGREEMENT—Background of and Reasons for the Conversion Merger" in this Annex I.

Director Benefits

Continued Service. The Citizens Savings directors will continue to serve BB&T Financial for a period of at least five years following consummation of the Acquisition, initially on Citizens Savings' Board of Directors and then, following the Merger, through participation on an advisory board of BB&T in the community where the director is located. In consideration of such service, BB&T Financial or a subsidiary thereof will initially pay directors' fees to each outside director as follows: the Chairman of the Board will receive $7,000 per year; the Vice Chairman of the Board will receive $6,000 per year; and each remaining outside director will receive $5,000 per year. In addition, each outside director will receive $271.00 for each meeting attended (which meetings, based on past practice, will be held approximately twelve times per year). Each of the outside directors will receive 10% increases in board fees in each of the five years following completion of the first year of service on the Board (which increases will be based on the increased salary from the prior years). For a discussion of the fees currently being received by Citizens Savings' directors, see "MANAGEMENT OF CITIZENS SAVINGS AND COMPENSATION OF CITIZENS SAVINGS' DIRECTORS, OFFICERS AND EMPLOYEES" in this Annex I. Compensation for any services to the

Board or advisory board after this period would be similar to that in effect at the end of this period (except to the extent that BB&T Financial elects to further increase such compensation). After the five year period, each advisory director's service will be subject to annual reelection. In the event that any advisory director is not reelected, BB&T Financial will deem such director to be retired as of the date that such director's term expires and thus the director will be immediately eligible to receive benefits under the directors retirement plan. See "—Director Retirement Plan" in this Annex I.

BB&T Financial Stock Options. BB&T Financial has agreed to grant each outside director of Citizens Savings options to purchase BB&T Financial Common Stock. The stock options would have a term of ten years and would vest in equal increments over a five year period, beginning on the first anniversary date of the grant, subject to 100% vesting at the director's earlier retirement from the Board of Directors or the BB&T advisory board due to health reasons, death or disability, and also subject to a recommendation by the BB&T Financial Compensation Committee that vesting be accelerated in the event of termination of employment by BB&T Financial other than for cause. The exercise price of the stock options would be equal to the market price of BB&T Financial Common Stock on the date of the grant of the stock options (which would be the Closing Date).

The following table shows the potential values of the options granted to each outside director to purchase shares of BB&T Financial Common Stock after one year. These values assume 5% and 10% appreciation rates in the market price of BB&T Financial Common Stock and that 100% of the options vest at the end of one year. In fact, the options do not vest fully until five years have elapsed (with certain exceptions) and the market price of BB&T Financial Common Stock could decrease rather than increase (in which case the value of the options would be $0). *For these and other reasons, including that the value is not discounted to reflect vesting restrictions, BB&T Financial and Citizens Savings believe that after one year the actual values of the options may be significantly less than those shown in the table. Indeed, insofar as the option exercise price is equal to the BB&T Market Price on the date of the grant, BB&T Financial and Citizens Savings believe the options have no intrinsic value as of that date.*

Directors	Number of Shares Subject to Options	Percent of Estimated Number of Shares Offered in the Subscription Offering(1)	Estimated Realizable Value of Options at End of One Year at Assumed Annual Rates of Stock Appreciation(2)	
			5%	10%
Harry H. Davis	1,418	.75%	$ 2,198	$ 4,396
R. Sam Edmiston (Vice-Chairman)	1,418	.75%	$ 2,198	$ 4,396
William B. Harris	1,418	.75%	$ 2,198	$ 4,396
Samuel H. Houston, Jr.	1,418	.75%	$ 2,198	$ 4,396
William S. Neel (Chairman)	1,418	.75%	$ 2,198	$ 4,396
Jeff Poore	1,418	.75%	$ 2,198	$ 4,396
Gary A. Roach	1,418	.75%	$ 2,198	$ 4,396
Grady C. Shoe	1,418	.75%	$ 2,198	$ 4,396
Total as a Group	11,344	6.00%	$17,584	$35,168

(1) Options for shares of BB&T Financial Common Stock granted to directors are in addition to, and are not a part of, the estimated 193,549 shares being offered in the Offerings.

(2) Estimated Realizable Value represents the difference between the estimated market value of the stock one year from the date of grant, assuming appreciation at the indicated rate, and the estimated exercise price (fair market value on the effective date of the grants) of $31.00 per share. The foregoing appreciation rates are used for illustrative purposes only and do not necessarily reflect the rates of appreciation, if any, that can be expected for BB&T Financial Common Stock.

BB&T Financial Restricted Stock Awards. BB&T Financial also has agreed to grant awards of restricted shares to each outside director of Citizens Savings. The shares of restricted stock would vest in equal increments over a five year period beginning at the end of the first year subject to 100% vesting at the director's earlier retirement from the Board of Directors or the BB&T advisory board due to health reasons, death or disability, and also subject to a recommendation by the BB&T Financial Compensation Committee

that vesting be accelerated in the event of termination of employment by BB&T Financial other than for cause. During the time the restrictions are in place, the directors will have voting and dividend rights with respect to the stock. In addition, BB&T Financial will pay cash bonuses to directors receiving awards of restricted stock to compensate those individuals for a portion of the tax liability associated with the awards granted. The cash bonus would equal 35% of the market price of the restricted stock awarded at the date of grant, payable as the tax liability is incurred.

The following table shows the estimated value of the awards of restricted stock of BB&T Financial granted to each outside director. The table assumes that the acquisition of Citizens Savings occurs on January 1, 1994 and that the restricted shares vest at 20% per year thereafter and that each restricted share has a market price equal to $31.75 on the date of vesting. *BB&T Financial and Citizens Savings believe that the following table may significantly overstate the value of the restricted stock because, among other things, it does not reflect the uncertainties associated with the vesting restrictions and the market price of BB&T Financial Common Stock in the future.*

Name	Number of Shares of Restricted Stock	Percent of Estimated Number of Shares Offered in the Subscription Offering(1)	Dollar Amount Vesting At					Estimated Value of Cash Bonus
			1/1/95	1/1/96	1/1/97	1/1/98	1/1/99	
Harry H. Davis	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
R. Sam Edmiston (Vice-Chairman)	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
William B. Harris	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
Samuel H. Houston, Jr.	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
William S. Neel (Chairman)	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
Jeff Poore	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
Gary A. Roach	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
Grady C. Shoe	2,126	1.125%	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 13,181	$ 23,067
Total as a Group	17,008	9.00%	$105,448	$105,448	$105,448	$105,448	$105,448	$184,536

(1) Shares of restricted stock granted to directors are in addition to, and are not a part of, the estimated 193,549 shares being offered in the Offerings.

Thus, if all the restricted shares vest as of January 1, 1999 and the BB&T Financial stock price were $31.00 at that date, the total value of restricted stock awards for each director at January 1, 1999 would be $65,905. If the BB&T Financial stock price were to increase by 5% per year during that five-year period, the total value of the restricted stock awards on January 1, 1999 would be $84,114. The value would be $106,143 at January 1, 1999 assuming a 10% appreciation rate. Assuming a discount rate of 7% per year, the present value of the restricted stock awards (assuming full vesting on January 1, 1999 and no appreciation in the stock price) would be $46,990 on January 1, 1994.

Director Retirement Plan. Each member of the Citizens Savings Board of Directors (including Larry Putnam) will be permitted to continue any retirement plan for directors maintained by Citizens Savings, including the right to receive benefits under such plan (see, "MANAGEMENT OF CITIZENS SAVINGS AND COMPENSATION OF CITIZENS SAVINGS' DIRECTORS, OFFICERS, AND EMPLOYEES—Retirement Payment Agreements with Directors" in this Annex I. In addition, each member of Citizens Savings' Board of Directors will be entitled to select one of two director retirement plans established by BB&T. Under the BB&T plan, such members will be permitted to retire at age 70 (or anytime thereafter or upon reaching disability) and receive either (a) 75% of the Board fees being received at the time of retirement, for the remainder of the life of the director, or, if later, for the remainder of the life of any surviving spouse, or (b) a minimum guaranteed retirement payment of $12,000 per year for a period of ten years following retirement (with payment of fees surviving to the estate of the director if the director dies during such period). In addition, should the director die while in service of the Board and the death should occur after the age of 70, the director's estate will be guaranteed to receive $12,000 per year for ten years. The foregoing provisions may also apply in the event of failure to reelect the director in any of the first five years of service after the Acquisition. See "—Continued Service" in this Annex I. Two of the Citizens Savings directors are currently 70 years or older and thus eligible for retirement under the BB&T plan; however, these two directors do not currently intend to retire in the next few years.

Officer Benefits

BB&T Financial Stock Options. BB&T Financial has agreed to grant Jon L. Putnam, Mary H. Cline, and David S. Brown options to purchase BB&T Financial Common Stock. The stock options would have a term of ten years and would vest in equal increments over a five year period, beginning on the first anniversary date of the grant, subject to 100% vesting at the officer's earlier retirement due to health reasons, death or disability, and also subject to a recommendation by the BB&T Financial Compensation Committee that vesting be accelerated in the event of termination of employment by BB&T Financial other than for cause. The exercise price of the stock options would be equal to the market price of BB&T Financial Common Stock on the date of the grant of the stock options (which would be the Closing Date).

The following table shows the potential values of the options granted to each officer to purchase shares of BB&T Financial Common Stock after one year. These values assume 5% and 10% appreciation rates in the market price of BB&T Financial Common Stock and that 100% of the options vest at the end of one year. In fact, the options do not vest fully until five years have elapsed (with certain exceptions) and the market price of BB&T Financial Common Stock could decrease rather than increase (in which case the value of the options would be $0). *For these and other reasons, including that the value is not discounted to reflect vesting restrictions, BB&T Financial and Citizens Savings believe that after one year the actual value of the options may be significantly less than those shown in the table. Indeed, insofar as the option exercise price is equal to the BB&T Market Price on the date of the grant, BB&T Financial and Citizens Savings believe the options have no intrinsic value as of that date.*

Officers	Number of Shares Subject to Options	Percent of Estimated Number of Shares Offered in the Subscription Offering(1)	Estimated Realizable Value of Options at End of One Year at Assumed Annual Rates of Stock Appreciation(2)	
			5%	10%
Jon L. Putnam	4,535	2.4%	$ 7,029	$14,059
Mary H. Cline	1,512	.8%	$ 2,344	$ 4,687
David S. Brown	1,512	.8%	$ 2,344	$ 4,687
Total as a Group	7,559	4.0%	$11,717	$23,433

(1) Options for shares of BB&T Financial Common Stock granted to officers are in addition to, and are not a part of, the estimated 193,549 shares being offered in the Offerings.

(2) Estimated Realizable Value represents the difference between the estimated market value of the stock one year from the date of grant, assuming appreciation at the indicated rate, and the estimated exercise price (fair market value on the effective date of the grants) of $31.00 per share. The foregoing appreciation rates are used for illustrative purposes only and do not necessarily reflect the rates of appreciation, if any, that can be expected for BB&T Financial Common Stock.

BB&T Financial Restricted Stock Awards. BB&T Financial also has agreed to grant awards of restricted shares to Jon L. Putnam, Mary H. Cline, and David S. Brown. The shares of restricted stock would vest in equal increments over a five year period subject to 100% vesting at the officer's earlier retirement due to health reasons, death or disability, and also subject to a recommendation by the BB&T Financial Compensation Committee that vesting be accelerated in the event of termination of employment by BB&T Financial other than for cause. During the time the restrictions are in place, the officers will have voting and dividend rights with respect to the stock. In addition, BB&T Financial will pay cash bonuses to officers receiving awards of restricted stock to compensate those individuals for a portion of the tax liability associated with the awards granted. The cash bonus would equal 35% of the market price of the restricted stock awarded at the date of grant, payable as the tax liability is incurred.

The following table shows the estimated value of the awards of restricted stock of BB&T Financial granted to each officer. The table assumes that the acquisition of Citizens Savings occurs on January 1, 1994 and that the restricted shares vest at 20% per year thereafter and that each restricted share has a market price equal to $31.75 on the date of vesting. *BB&T Financial and Citizens Savings believe that the following table may significantly overstate the value of the restricted stock because, among other things, it does not reflect the uncertainties associated with the vesting restrictions and the market price of BB&T Financial Common Stock in the future.*

Officers	Number of Shares of Restricted Stock	Percent of Estimated Number of Shares Offered in the Subscription Offering(1)	Dollar Amount Vesting At 1/1/95	1/1/96	1/1/97	1/1/98	1/1/99	Estimated Value of Cash Bonus
John L. Putnam	6,803	3.6%	$42,179	$42,179	$42,179	$42,178	$42,178	$73,813
Mary H. Cline	2,268	1.2%	$14,062	$14,062	$14,062	$14,061	$14,061	$24,608
David S. Brown	2,268	1.2%	$14,062	$14,062	$14,062	$14,061	$14,061	$24,608
Total as a Group	11,339	6.0%	$70,303	$70,303	$70,303	$70,300	$70,300	$123,029

(1) Shares of restricted stock granted to officers are in addition to, and are not a part of, the estimated 193,549 shares being offered in the Offerings.

Thus, if all the restricted shares vest as of January 1, 1999 and the BB&T Financial stock price were $31.00, at that date, the total value of the restricted stock awards for each officer at January 1, 1999 would be $210,893 for Mr. Putnam and $70,308 each for Ms. Cline and Mr. Brown. If the BB&T Financial stock price were to increase by 5% per year during that five-year period, the total value of the restricted stock awards on January 1, 1999 would be $269,160 for Mr. Putnam and $89,733 each for Ms. Cline and Mr. Brown. The values would be $339,645, $113,232 and $113,232, respectively at January 1, 1999 assuming a 10% appreciation rate. Assuming a discount rate of 7% per year, the present value of the restricted stock awards (assuming full vesting on January 1, 1999 and no appreciation in the stock price) would be $150,364 for Mr. Putnam and $50,129 each for Ms. Cline and Mr. Brown on January 1, 1994.

Employment Agreements. Upon consummation of the Acquisition, Jon L. Putnam, Mary H. Cline and David S. Brown will become parties to employment agreements with BB&T Financial or BB&T. These agreements will provide for their continued employment by BB&T Financial for a term of five years (subject to annual extensions beginning on the fourth anniversary) and will provide for annual cash compensation in the first year of not less than 15% more than their cash compensation, including salary and bonus (and, in the case of Jon L. Putnam only, directors fees; and in the case of David S. Brown only, commissions from the sale of accident, health and credit life insurance to loan customers) as of April 28, 1993. This would result in initial salaries to these three officers of $88,435, $41,832 and $60,242, respectively. See "MANAGEMENT OF CITIZENS SAVINGS AND COMPENSATION OF CITIZENS SAVINGS' DIRECTORS, OFFICERS AND EMPLOYEES" in this Annex I. Salary increases after the first year will be in accordance with BB&T Financial's annual salary plan, based on, among other things, an annual performance review, but in any event the officer's salary will in each year be increased by at least the average salary increase of all BB&T Financial officers.

The agreements would contain a provision permitting those officers to make an election at any time to participate in the BB&T Financial Long-Term Incentive Compensation Plan and the BB&T Financial Executive Incentive Compensation Plan, if the officer would then be eligible to participate in such plans, in which event the initial minimum salary payable to the officer would be reduced to reflect a base salary which, when added to (A) the "Target Award" (as defined in the BB&T Financial Executive Incentive Compensation Plan) and (B) the assumed value of stock options granted under the Long-Term Incentive Compensation Plan (pursuant to BB&T Financial's standard practices for valuing such options) would result in compensation equal to the base salary he would have received but for such election.

The following sets forth Mr. Putnam's current and future compensation under BB&T Financial's employment agreement with Mr. Putnam, assuming he does not make the election described in the preceding paragraph.

Fiscal Year Ended March 31, 1993				First 12 Months After the Conversion Merger			
Salary ($)	Bonus ($)	Other Annual Compensation(1)	All Other Compensation(2)	Salary ($)	Bonus ($)	Other Annual Compensation(3)	All Other Compensation(4)
$65,331	$0	$12,164	$6,502	$88,435	$0	$972	$—

(1) Includes $8,100 in directors' fees ($5,000 of which was deferred) pursuant to his Retirement Payment Agreement; $972 in civic and country club dues; $3,092 reimbursement for mileage (.25 per mile).

(2) Reflects amounts accrued to Mr. Putnam's account under Citizens Savings' retirement plan. All employees with at least two years of service are eligible to receive a contribution of 9.4% of their annual salary each year.
(3) Reflects civic and country club dues. Mr. Putnam will be entitled to the use of an automobile consistent with BB&T's policy. Mr. Putnam will not receive directors' fees after the Conversion Merger. However, Mr. Putnam's salary after the Conversion Merger includes compensation for his service on the Board. $5,000 of his salary will be deferred pursuant to his Retirement Payment Agreement.
(4) Amounts, if any, that may be contributed by BB&T Financial to the 401(k) plan cannot be estimated at this time.

Other Benefits. The officers also would be entitled to receive, on the same basis as other officers of BB&T Financial, group employee benefits such as sick leave, vacation, retirement benefits, group disability and health, life and accident insurance and similar indirect compensation which BB&T Financial may from time to time extend to its officers. Mr. Putnam and Mr. Brown also will be entitled to the use of an automobile consistent with BB&T's policy for providing officers with automobiles.

Mr. Putnam, Ms. Cline and Mr. Brown also would be eligible to receive up to the following number of shares of BB&T Financial Common Stock in the Citizens Savings ESOP. See "ADDITIONAL BENEFITS TO BE OFFERED BY BB&T FINANCIAL—Benefits to All Employees—Employee Stock Ownership Plan" in this Annex I. The allocation in the following table is based one-half on salary and one-half on tenure.

			ESOP Allocation	
	Salary	Years of Service	Number of Shares(1)	$
Putnam	$76,900	19	3,435	$109,075
Cline	$36,376	20	2,655	$ 84,306
Brown	$52,384	4	1,504	$ 47,739

(1) Assumes a market price of $31.75 per share and that all shares are allocated immediately. As noted above, allocations actually are made over five years. *BB&T Financial and Citizens Savings believe that this table may significantly overstate the value of the participant's accrued balance in the Citizens Savings ESOP because, among other things, it does not reflect the uncertainties associated with the vesting restrictions and the market price of BB&T Financial Common Stock at the time such shares vest and/or are distributed to purticipants.*

ADDITIONAL BENEFITS TO BE OFFERED BY BB&T FINANCIAL

Community Benefits

BB&T Financial has agreed to establish and immediately fund a charitable trust to be administered by BB&T, in an amount equal to 10% of the Appraised Value of Citizens Savings, estimated to be $600,000. The trust would make charitable contributions out of the principal and accrued interest in the trust. The trust will donate to the charity or charities designated by a majority vote of the individuals who currently constitute Citizens Savings' Board of Directors, provided that (i) the contributions (including interest) are made within five years of consummation of the Acquisition, (ii) the recipient of each charitable contribution is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, at the time of the donation and (iii) BB&T Financial, rather than the Board of Directors or any individual director, would be eligible for any deductions that result from the charitable contributions.

In addition, community residents who live in Iredell County are permitted to purchase shares in the Community Offering at the 95% Price. See "THE OFFERINGS—General—Purchase Price."

Deposit Bonus

BB&T Financial will pay each Eligible Member Subscriber a one-time bonus equal to 1.00% of such Eligible Member Subscriber's balances in any deposit accounts (including certificates of deposit, money market deposit accounts, individual retirement accounts, etc.) outstanding with Citizens Savings on the Eligibility Record Date (December 31, 1992). This one-time bonus will be paid to Eligible Member Subscribers within 30 days of the consummation of the Conversion and the Acquisition.

BB&T Financial's offer to provide this program shall not be deemed to create contract rights in any individual depositor or group of depositors but is provided in compliance with the Reorganization Agreement.

Benefits to All Employees

Pay and Employment. BB&T Financial also will offer to Citizens Savings' employees comparable positions and responsibilities after consummation of the Merger, taking into account the fact that Citizens Savings' branches will become branches of BB&T. BB&T Financial has further agreed that if BB&T Financial terminates employees at any time, it will not discriminate against the employees of Citizens Savings and will treat them in a manner similar to its other employees. BB&T Financial has agreed that it will not alter the pay of any Citizens Savings' employee (other than that of the officers described above), and that the places where Citizens Savings' employees work will not be changed to locations outside of Citizens Savings' current market area.

In addition, BB&T Financial will pay all employees of Citizens Savings a one-time cash bonus equal to one month's salary within 30 days of the consummation of the Conversion and the Acquisition.

Employee Stock Ownership Plan. BB&T Financial also has agreed that it will establish and fund an employee stock ownership plan for the benefit of employees of Citizens Savings. 18,898 shares of BB&T Financial Common Stock will be placed in such plan (approximately 10% of the estimated number of shares offered in the Offerings) for issuance to employees of Citizens Savings. All of Citizens Savings' employees that are regularly scheduled to work 1,000 hours or more a year will be eligible to participate in the employee stock ownership plan. The shares will be allocated to and vested in employee accounts ratably over a five year period. See "DESCRIPTION OF CAPITAL STOCK OF BB&T FINANCIAL—Certain Provisions Which May Have an Anti-Takeover Effect—Employee Stock Ownership Plans."

Existing Retirement Plan. Upon consummation of the Acquisition, Citizens Savings' Money Purchase Pension Plan will be terminated and accrued benefits will be paid out to the individual participants. See "MANAGEMENT OF CITIZENS SAVINGS AND COMPENSATION OF CITIZENS SAVINGS' DIRECTORS, OFFICERS AND EMPLOYEES—Retirement Plan". Based on the valuation of the vested interest in Citizens Savings' Money Purchase Pension Plan as of December 31, 1992, $111,141.86 will be paid out in the aggregate to participants. The final amount distributed will be adjusted for additional contributions, earnings and losses immediately prior to the termination of the existing plan.

Additional Benefits. Qualified Citizens Savings' employees would be permitted to participate in: BB&T Financial's retirement plan; a thrift 401(k) savings plan; a flexible benefits program that would include as its components basic life insurance (term), long-term disability and health care (medical plans); a dental plan; dependent life insurance; accidental death and dismemberment insurance; spending accounts for child care and medical care not covered under the foregoing medical plans; bank business travel accident insurance; paid vacation time, sick leave and holidays; reduced loan rates; and continuing education opportunities. Citizens Savings' employees will receive credit for past service at Citizens Savings for purposes of vesting and benefit accruals, including employee benefit plan participation and funding, as if the employees had been employees of BB&T Financial from the point of employment with Citizens Savings.

Exhibit 3

VOTE TOTALS FOR INSTITUTIONS ACQUIRED BY BB&T THROUGH MERGER/CONVERSIONS

Acquired	Institution and Location	Yes Votes	% Yes	No Votes	% No
08/08/91	Gate City Federal Savings and Loan Association Greensboro, NC	2,748,301	71.86%	156,370	4.09%
08/08/91	Albemarle Savings and Loan Association Elizabeth City, NC	555,031	73.13%	15,330	2.02%
06/26/92	Peoples Federal Savings Bank Thomasville, NC	585,598	68.07%	9,161	1.06%
05/18/93	Carolina Savings Bank Wilmington, NC	485,476	62.15%	15,389	1.97%
05/18/93	Edenton Savings and Loan Association Edenton, NC	75,698	68.57%	1,518	1.38%
10/29/93	Mutual Savings Bank of Rockingham County, SSB Reidsville, NC	554,375	81.33%	19,360	2.84%
12/23/93	Citizens Savings Bank, SSB Mooresville, NC	401,021	79.79%	28,879	5.75%

Exhibit 4

STOCK OFFERINGS FOR INSTITUTIONS ACQUIRED BY BB&T THROUGH MERGER/CONVERSIONS

Acquired	Institution and Location	Offerings (in Dollars)		Offerings (in Shares)	
08/08/91	Gate City Federal Savings and Loan Association, Greensboro, NC				
	Subscription Offering	$8,288,924	21.84%	410,546	22.65%
	Community Offering	$2,649,756	6.98%	131,241	7.24%
	Public Offering	$27,011,324	71.18%	1,271,121	70.12%
08/08/91	Albemarle Savings and Loan Association, Elizabeth City, NC				
	Subscription Offering	$4,651,715	57.79%	230,397	58.95%
	Community Offering	$207,069	2.57%	10,256	2.62%
	Public Offering	$3,191,216	39.64%	150,175	38.42%
06/26/92	Peoples Federal Savings Bank, Thomasville, NC				
	Subscription Offering	$4,417,303	44.17%	173,024	45.25%
	Community Offering	$837,869	8.38%	32,819	8.58%
	Public Offering	$4,744,835	47.45%	176,552	46.17%
05/18/93	Carolina Savings Bank, Wilmington, NC				
	Subscription Offering	$7,947,076	95.32%	256,440	95.32%
	Community Offering	$390,412	4.68%	12,598	4.68%
	Public Offering	$0	0.00%	0	0.00%
05/18/93	Edenton Savings and Loan Association, Edenton, NC				
	Subscription Offering	$3,741,771	53.45%	124,064	54.22%
	Community Offering	$1,284,122	18.34%	42,577	18.61%
	Public Offering	$1,974,120	28.20%	62,177	27.17%
10/29/93	Mutual Savings Bank of Rockingham County, SSB, Reidsville, NC				
	Subscription Offering	$5,605,395	89.58%	196,130	90.57%
	Community Offering	$651,864	10.42%	20,409	9.43%
12/23/93	Citizens Savings Bank, SSB, Mooresville, NC				
	Subscription Offering	$5,871,661	100.00%	216,471	100.00%
	Community Offering	$0	0.00%	0	0.00%

MAIN OFFICE
155 WEST SOUTH STREET
P.O. BOX 489
ALBEMARLE, N.C. 28002 0489

HOME
SAVINGS BANK, SSB

WEST STANLY
HIGHWAY 27 24
P.O. BOX 658
LOCUST, N.C. 28097 0658

January 17, 1994

The Honorable Stephen L. Neal
United States Congressman
U.S. House of Representatives
Subcommittee on Financial Institutions
Supervision, Regulation and Deposit
Insurance
Committee on Banking, Finance & Urban Affairs
One Hundred Third Congress
Room 212 O'Neill House Office Building
Washington, D.C. 20515

Dear Congressman Neal:

My name is Carl M. Hill. I've worked for Home Savings Bank, SSB ("Home Savings") for thirty-seven years. I've worked hard, and I'm proud of what we've accomplished.

I started with the Bank in May, 1957. Sixteen years later, in February, 1973, I became President and managing officer of Home Savings, and I've been in that position ever since. During my thirty-seven years at Home Savings, I've made many friends in the industry and I've seen many changes.

I have seen the good and the bad economic times for our institution. During the late 70's and early 80's, I saw many of my friends forced to make hard decisions pertaining to the future of their institutions. Some of those institutions failed. We don't want that to happen to us.

Not everyone understands the position we're in today. Home Savings is a small institution in a small community. We have built a fine, strong institution which has done a good job financing homes for Stanly County people. That's no longer enough. The truth is that in communities like ours, the mutual institutions are losing customer base to the larger institutions which can offer so many more services. We have been very successful as a mutual savings institution, but we can't ignore the effects of this increasing competition. For us to be successful in our community today, we must make changes. We can't stand still; we can't turn back the clock. We want to make sure our institution stays strong and can continue to do well in Stanly County.

The Home Savings board of directors recognized these changes and then took almost a year to carefully consider its choices and options. We considered all possibilities, and we did it in a careful and deliberate way. Outside consultants were hired to meet with the Board to assist us in our planning for the future.

With our consultants, we considered staying a mutual institution. We realized that the number of mutual organizations in this country is declining, so we decided we should take a close look at why this is happening. In our own community, our customer base is shrinking due to our customers going to the larger banks which offer so many more services than we offer. Home mortgage loans are our basic service and we have to send our customers to the larger banks for other services. Trying to start up these additional services ourselves would be difficult due to our size and lack of expertise in these areas. The volume from our community would not be large enough to hire people with the necessary expertise. I have seen friends of mine attempt this and fail, either from the lack of volume or lack of knowledge.

There are other problems facing small institutions. Technology is a difficult thing for the smaller institutions. We are in a fast moving computer age. Home Savings, with a staff of just 37 people, can't send its employees to schools for training to keep up with these fast changes. Other problems are the cost of the modern equipment, and being able to utilize it to its capacity. Small institutions can't do it, plain and simple.

There is also the burden of regulatory changes, which are becoming more and more difficult and expensive to interpret and to implement, especially with the size of our staff. The paperwork in our institution continues to increase every year. We know that a lot of the effort this takes now could be reduced and made better after the merger.

We considered a stock conversion without an acquirer, the so-called "stand alone" conversion. For many reasons, we decided against it. A stock conversion would not bring additional services to our customers, would not help the problems we face with technology, and would not offer assistance with meeting regulatory requirements and changes. In fact, becoming a stock institution would bring us more regulation, not less.

Another important reason for not doing a stand-alone conversion would be the reaction of our community to a stock sale. A few years ago a savings and loan in our town converted to a stock association. It didn't last long. The RTC took it over and the local people who had purchased stock lost their money. I can give

another example. About ten years ago, a state bank was organized. Today there is very little market for its stock, and the price has stayed about the same. For these reasons, we feel that very few of our depositors would buy our stock and the community would receive very little benefit from the stock sale. Most of the stock, if the sale was successful, would be sold to outside traders, such as those people from New York, New Jersey and Colorado who have tried to open accounts in recent years. With all due respect, our purpose is not to serve those stock speculators.

This explains part of our thinking in deciding on the best route for our institution, our employees, our community and our depositors. After a great deal of consideration, we concluded that the wisest thing for Home Savings would be a merger conversion with BB&T. We talked with several banks. The reason we decided on BB&T over some other larger banks was that the philosophy of the management of BB&T pertaining to employees, communities and customers, seemed to be closely related to the beliefs we were already operating under and which we feel had made us successful up to now. We were assured by BB&T that much of the decision-making authority on loans and other extensions of credit would remain at the local level. As a result, we obtained for our community the best of both worlds -- a broader variety of services and products backed by a solid financial institution and the ability to use our experience and knowledge of the community to make those products work for our customers.

The transaction with BB&T also has other benefits. For example, when we first met with BB&T, job security for all of our present employees was a concern of management. BB&T has agreed to keep all of our employees and retrain or transfer with the agreement of the employee. Also, BB&T has offered stock incentives to employees for their dedication and to be sure they will continue making our office a success in our community. We believe this is fair and appropriate as well.

BB&T has offered employment contracts to myself and Ronald Swanner, who is our Executive Vice-President, because we have agreed to continue our efforts to lead this office in our community. BB&T expects us to continue to work for what we are paid, and we will do so.

Under the terms of our agreement with BB&T, the present board of directors will become an advisory board. They will be paid a monthly fee until their normal retirement age of 70, and they will receive retirement compensation for ten years after their retirement. We believe this is appropriate as well. Our Board members have been very hard-working, and they will continue to have

responsibilities after the merger. We would not be where we are today without good Board members. BB&T has recognized that, and BB&T wants to retain the benefit of their advice and services.

In addition to the other benefits I've mentioned, BB&T has agreed to set up a $2 million trust for charitable organizations in our community. BB&T has also agreed to pay a 2% deposit bonus to our depositors. The 2% bonus will be paid on amounts the members had on deposit as of January 31, 1993. In addition, eligible members will have the opportunity to purchase BB&T stock at a discount. We think all of these terms are fair to everyone. No one is left out except the stock speculators, and that's okay with us.

Our Board spent a great deal of time considering the fairness of this transaction before agreeing to work toward a merger conversion with BB&T. We concluded that this transaction is fair to our community, to our employees, to our officers and directors, and to BB&T. As a result, we signed a binding contract with BB&T on May 27, 1993. We want to go forward with our plans. BB&T is a fine organization. Putting our two companies together will be good for Stanly County.

We believe it would be a mistake to stop the transaction at this point. H.R. 3615 had not been introduced at the time we signed our agreement with BB&T. We were following all the laws and regulations when we started, and we will continue to do so. We have gone to considerable expense and work to get to this point. It has been announced to our community that this is our plan and we are continually being asked about our progress with it. Right now, we aren't allowed to say very much because we haven't mailed out our prospectus and proxy materials yet. Even so, we have had a lot of our customers say they are excited about BB&T bringing its services to our community.

There have been some newspaper articles objecting to our merger, but I believe the statements in those articles were made by people who have been misinformed about the terms of our merger. Once we can tell our story in full, I believe our members will agree with our plans and approve the merger with BB&T.

I have attempted to put numerous hours of thought and conversation into a few pages. I hope this explains what we are trying to do. We want our institution to remain strong, and we believe a merger with BB&T is the best way to achieve that.

If anything I have said needs clarifying, I would be happy to reply to any questions.

Sincerely,

Carl M. Hill
President

PO Box 388
Forest City, North Carolina 28043
704-245-5442

Centura Bank

January 17, 1994

The Honorable Stephen L. Neal
United States Congressman
U.S. House of Representatives
Subcommittee on Financial Institutions
Supervision, Regulation and Deposit
Insurance of the Committee on Banking,
Finance and Urban Affairs
One Hundred Third Congress
Room 212 O'Neill House Office Building
Washington, D.C. 20515

Dear Congressman Neal:

My name is Juanita Newton. I live and work in Forest City, North Carolina. In 1962, I was hired by First Federal Savings and Loan Association of Forest City to work as a teller. Today that thrift institution is part of Centura Banks, Inc. ("Centura") and I now work for Centura as a senior vice president. The changes that I have seen since the merger with Centura have been positive. I would like to tell you why.

For thirty-one years, I worked for a traditional savings and loan association. During most of those thirty-one (31) years there were essentially two types of financial institutions: the traditional savings and loan and the commercial bank. The savings and loans offered home loans and deposit accounts; the commercial banks offered checking accounts, car loans, commercial loans, and other services. Each type of financial institution fulfilled a need and had its own, protected place in the market. Then the federal government began a deregulation process which caused the commercial banks to become very aggressive. The commercial banks went after the customers who had traditionally maintained their accounts with us, and they went after the home loan business too. Deregulation put us in a totally changed environment.

Immediately before our merger with Centura, First Savings Bank of Forest City, SSB was a state-chartered mutual savings bank. We had converted from a federally-chartered savings and loan association to a state chartered savings bank in September, 1992. We believed that doing business as a savings bank rather than a savings and loan would be beneficial because of the negative publicity which came to the savings and loan industry in the 1980's.

After we converted to the state charter, we began to take a hard look at the future of our institution. First Savings was a

well-capitalized institution but it was in a small market. Essentially, our market area was limited to Rutherford County, North Carolina where we had our only office and eight employees. Even though we were in a small market, that market is also served by commercial banks and a number of other companies with mortgages and other financial services to sell.

Before the merger, First Savings was able to offer mortgage loans and deposit accounts, but nothing else. The competition for home loans and deposit accounts was growing, and we knew it. We also knew that many of our good customers were older. Many potential new customers, especially the younger ones, were attracted to those institutions which could offer lots of other financial services, such as car loans, credit cards, ATM cards and things of that sort. With only eight employees, we did not have the people and we did not have the technology needed to diversify our operation to provide those things. We also realized that if we tried to diversify into those other products and services, we might lose a great deal of money or even fail completely. We knew that many thrift institutions which tried to diversify in the 1980's had fallen flat on their faces or ended up in the hands of the Resolution Trust Corporation. We didn't want that.

It was clear that we had to change to meet the competition and it was clear that we didn't have the resources to do it on our own. Therefore we began to look at the possibility of combining First Savings Bank with a larger institution. Several banks expressed interest in us, but we didn't rush toward a decision. We first sought the advice of a financial advisor and outside legal counsel to help us consider our choices. With their help, we began to talk with larger banks. We were determined to see that any changes we made would bring real benefits to our members, our employees and our community.

Centura eventually made a proposal which satisfied all of these requirements. We knew that any proposal we endorsed would require the approval of our members, and we were determined not to go to them with anything less than the best. We signed our agreement with Centura in March, 1993. Then we worked hard to comply with all the regulatory requirements. Our members received proxy materials which set out in detail all the benefits of the transaction.

The benefits for members included expanded financial services, the opportunity to purchase Centura stock at a discount, and a 1% special payment to holders of deposit accounts who did not buy stock. Incidently, I believe we were the first institution in the state to propose payment of that deposit premium. We also proposed

the establishment of a substantial community foundation, with funding of $1.5 million. At the time it was set up, our foundation was the largest one established in North Carolina in connection with a merger/conversion. That foundation, just last week, made its first grants to a number of community organizations. The response to those grants has been overwhelming.

It is true that our directors also received benefits from the transaction. Their benefits will be well-earned. We had seven directors at the time of the merger. Each of them had worked very hard for us. Every week two of our directors helped appraise property for us. They took one day each week away from their regular jobs to inspect the real estate for our mortgage loans. Four of the seven directors also worked as officers of the Savings Bank. They kept themselves personally aware of all matters affecting the operation and management of our institution, including the many regulatory requirements and changes. We called on them frequently for advice and decisions concerning the loans we were considering, the purchase or sale of securities and countless other matters. We literally would not change mortgage loan rates without consulting them. This was, in short, an unusually active and productive Board of Directors. And despite their high degree of responsibility and involvement, they served without the protection of D&O liability insurance. Since the merger, they have continued to serve Centura as an advisory board. They have agreed to help make the merger a success by remaining active in the community in a number of ways. Therefore, as I said, the benefits they will receive from our transaction will be well-earned.

All of these benefits were described in the proxy materials our members received. We then scheduled a special meeting in September, 1993 for our members to vote on the conversion and merger with Centura Banks, Inc. I'm proud to say that over 75% of our members voted in favor of the transaction. I'm also proud to say that, since that time, the merger has been a great success.

I can personally testify about two ways in which the merger has been successful. First, we can now offer more services to our customers. Just a few months before the merger, I made a home loan to a customer. He told me he was dissatisfied with his bank because it didn't seem to care about him at all. His bank had shown no interest in helping him refinance his home to reduce the interest rate, even though he was a qualified borrower. When First Savings approved his new home loan, he asked if he could open a checking account with us. Unfortunately, that was not a service that we could offer him at the time. After the merger, however, he came back to us and opened up that checking account with us. Another customer recently wrote a letter to me about his

satisfaction with the merger and I am enclosing a copy of it for you to read.

As an employee, I can tell you about other benefits brought about by the merger. First Savings was a small institution with just one office and only eight employees. In a small place like that, opportunities for advancement were very few. Most of our employees thought, "once a teller, always a teller." We just couldn't offer many chances for advancement.

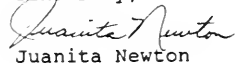
One of the first things we were able to do after the merger was to transfer an employee of twenty-five years experience from a teller position to that of an administrative assistant/loan processor. This employee always has been a very capable person and deserving of advancement. The opportunity just wasn't there because of our small size. Now that employee is enjoying new responsibilities and increased opportunities for the future.

That experience is not unique at our merged bank. I know of a second employee who is very excited about the new opportunities she will have now after twenty years of service with First Savings. And a third employee, who has been with us for less than a year, has told me she is looking forward to the chances she will have to advance her career with Centura Bank. There is no way that First Savings, as a small institution, could have matched the career advancement and training opportunities that Centura Bank has brought to us. I hope, therefore, that as you listen to testimony from others in this matter you won't forget what the opportunity for merger has meant to the employees of small institutions like First Savings.

Our members are benefiting from the expanded services we now provide and our employees are benefiting from their increased opportunities for training and advancement. In these and other respects, our merger has been a success. If we had waited and done nothing, the future might have been quite different. When interest rates rise again, the demand for home loans will fall. Small thrift institutions will have difficulty maintaining profitability in those circumstances. How will they survive? The thrift industry must look hard at its future and each institution must do what is best for it. In our case, I believe First Savings has done the best thing for its members, its employees and the community.

Thank you.

Sincerely,



Juanita Newton

January 3, 1994

Juanita P. Newton
Centura Bank
P. O. Box 388
Forest City, N. C. 28403

Dear Juanita:

I would just like to tell you that I am pleased with the merger of First Savings and Centura Bank. I am glad to know that services can be offered to people like me who need more than a savings accounts and a 15 year home mortgage. When I purchased my mobile home I tried to get a loan with you and you could not offer mobile home loans. So I had to go to another bank for a loan. Then I saved a substantial amount of money for a down payment on a home. Last year I built a new home and again I tried to get a loan with you, but you were again unable to meet my needs since I needed a longer term than 15 years, and because First Savings was so CONSERVATIVE, 20% of the contract price was not sufficent.

My mom went to work for First Federal when I was three months old, and is still employed there, (now Centura) and I would like to have done business with you.

Sincerely,

Greg Hutchins

KENLY SAVINGS BANK
STATE SAVINGS BANK

January 14, 1993

Committee on Bank Finance and Urban Affairs
Financial Institutions Sub-Committee
Room 212 - O'Neil House Building
Washington, D.C. 20515

Dear Sirs,

I requested to be allowed to make a presentation to the Committee at the public hearing to be held January 20th in Winston-Salem on H.R. 3615. I was not included on the agenda for that hearing and therefore request that the attached comments be made a part of the written record for H.R. 3615.

If I can be of assistance in anyway to the Committee related to H.R. 3615, please allow me the opportunity.

Respectfully,

Harold T. Keen
President

HTK/jw

PO Box 219 / 207 West Second Street Kenly, NC 27542 919/284/4157
FDIC Insured

Statement of Harold T. Keen
to the United State
House of Representatives
Supervision, Regulation and Deposit
Insurance of the Committee on Bank,
Finance and Urban Affairs
100 Third Congress
Room 212 - O'Neill House Building
Washington, D.C. 20515

I am a Director and the Chief Executive Officer of Kenly Savings Bank, Inc., SSB ("Kenly Savings"), which is located in Kenly, North Carolina. Thank you for giving me this opportunity to present my written statement regarding House Resolution 3615.

The directors, officers, employees, and customers of Kenly Savings and the shareholders of our holding company, KS Bancorp, Inc. (the "Holding Company") have a substantial interest in House Resolution 3615 because, when it was introduced on November 22, 1993, Kenly Savings and our Holding Company had previously begun a proxy solicitation and an initial public offering of securities in connection with Kenly Savings' conversion from a North Carolina-chartered mutual savings bank to a North Carolina-chartered stock savings bank. In connection with our conversion, Kenly Savings converted from mutual to stock form, common stock of the Holding Company was offered and sold to the members of Kenly Savings and persons in the local community, and the Holding Company acquired ownership of Kenly Savings. Kenly Savings' conversion was completed on December 29, 1993.

Kenly Savings was organized in 1924 as a North Carolina-chartered institution in the mutual form. In 1969, Kenly Savings became a federally-chartered institution and in 1992, Kenly Savings converted from a North Carolina-chartered mutual savings bank. Kenly Savings has been a member of the Federal Home Loan Bank System since 1936 and its deposits have been federally insured since 1961.

The chief executive office of Kenly Savings is in Kenly, North Carolina, but Kenly Savings also has branch offices in Selma and Wilson, North Carolina. We have recently opened a loan production office in Clayton, North Carolina. All of our offices are located in Johnston and Wilson counties in North Carolina.

Kenly Savings is a strong and highly capitalized savings institution. Before our conversion to stock form, on June 30, 1993, Kenly Savings had total assets of approximately $76 million and net loans of $62 million. As of June 30, 1993, Kenly Savings had FDIC Tier 1 capital of over $6.9 million, or 9.21% of its regulatory assets (as compared to the requirement estimated to be 4%), and FDIC risk-based capital of $7.1 million, or 19.66% of regulatory assets (as compared to the requirement of 8%). As a

result of our conversion, we have acquired $7.2 million in addition capital.

Several months ago, Kenly Savings' board of directors began considering a conversion from the mutual to the stock form of ownership. During our consideration of this issue, Kenly Savings retained the services of financial advisors, accountants and attorneys who had vast experience in advising savings institutions regarding various regulatory and operational matters. Our board of directors was of the opinion that our capital position would be strengthened even more if we converted to the form of ownership used by the vast majority of other financial institutions. In addition, by converting to the stock form of ownership, we would obtain access to the capital markets in the future and would be able to offer our employees stock-based incentive compensation programs. In addition, we would be able to offer our members, our depositors and borrowers, the right to become owners of Kenly Savings through the purchase of capital stock which would be issued in the conversion. As a result of July 1, 1993, almost five months before H.R. 3615, our board of directors unanimously adopted a Plan of Conversion pursuant to which Kenly Savings would convert from a North Carolina-chartered mutual savings bank to a North Carolina-chartered savings bank in stock form, and stock of a newly formed holding company would be offered to our members and to the local community. On July 1, 1993, pursuant to North Carolina regulations, we made a public announcement of our plan to convert from the mutual to the stock form of ownership.

Kenly Savings then set about to obtain the necessary approvals and take the other actions which are required in order to convert from a mutual savings bank to savings bank in stock form. Because our primary regulator was the Administrator of the Savings Institutions Division, North Carolina Department of Commerce (the "North Carolina Administrator"), our conversion was governed by regulations which have been adopted by the North Carolina Administrator. These North Carolina regulations are virtually identical to the regulations which have been promulgated by the Office of Thrift Supervision and which are applied in connection with the mutual to stock conversions of federally-chartered institutions. Since we intended to form a holding company, we also had to file an application with the Board of Governors of the Federal Reserve System (the "Federal Reserve").

Over a period of several weeks, Kenly Savings and its attorneys, accountants and advisors drafted a comprehensive Prospectus describing its proposed securities offering and a detailed Proxy Statement describing the matters to be considered at the Special Meeting of our members called to vote on our Plan of Conversion (the "Special Meeting"). On September 28, 1993, Kenly Savings filed with the Securities Exchange Commission a Registration Statement on Form S-1, the purpose of which was to register the securities to be sold in our conversion under the

Securities Act of 1933. On October 1, 1993, the Holding Company filed its application with the Federal Reserve. On October 14, 1993, we filed with the North Carolina Administrator our Application to Convert a Mutual Savings Bank into a Stock Owned Savings Bank. This Application and the Registration Statement on Form S-1 contained, among numerous other items, copies of the proposed Prospectus and Proxy Statement which would be distributed to our members (our depositors and borrowers) who, in accordance with applicable regulations, would be given an opportunity to (i) vote on whether our Plan of Conversion should be approved and (ii) decide whether they wished to exercise their subscription rights and purchase shares of the Holding Company's common stock which would be issued in the conversion.

Our appraiser filed its appraisal with the North Carolina Administrator stating that the appraised value of Kenly Savings ranged from $7,650,000 to $10,350,000, with a mid-point of $9,000,000. As a result, in our conversion, in accordance with applicable regulations, we offered to the public a minimum of 765,000 shares and a maximum of 1,035,000 shares at $10.00 per share.

In accordance with applicable regulations, the right to purchase shares was granted in the following priorities: (i) Kenly Savings' Employee Stock Ownership Plan; (ii) our depositors who had accounts at Kenly Savings as of March 31, 1993; (iii) members (depositors and borrowers) of Kenly Savings as of October 15, 1993, the voting record date for the Special Meeting; and (iv) employees, officers and directors of Kenly Savings who were not members of a prior category and the institution's Management Recognition Plan. To the extent that stock remained available for sale after filling the subscriptions of persons in the categories set forth above, it was offered to members of the general public in Johnston and Wilson counties in North Carolina.

By letter dated November 10, 1993, the Federal Reserve approved the application filed with that office. The North Carolina Administrator reviewed our application to convert to stock form and authorized us to distribute our proxy solicitation and offering materials by letter dated November 12, 1993. Our Special Meeting to vote on our conversion was called for December 14, 1993. Our Prospectus and other offering materials and our Proxy Statement with respect to our Special Meeting were mailed to our members on November 16, 1993. Immediately thereafter we began receiving stock orders from our members and proxy cards with respect to the vote to approve our conversion. On November 22, 1993, after our conversion had been approved by our Board of Directors and publicly announced, after we had incurred hundred of thousands in expenses related to our conversion, after the North Carolina Administrator had authorized us to mail our stock offering and proxy solicitation materials and after our Prospectus and Proxy Statement had been distributed, H.R. 3615 was introduced in the Congress.

As a result of the introduction of H.R. 3615, we decided to distribute a Supplement to our Prospectus and Proxy Statement to all of our members entitled to vote on the conversion and entitled to purchase shares of common stock. This Supplement described, as best we could, H.R. 3615 and the issues raised by the introduction of that Bill. The Supplement was mailed to our members and prospective investors on December 14, 1993, and our Special Meeting originally scheduled for December 14, 1993 was adjourned until December 23, 1993, in order to give members a sufficient opportunity to consider the implication of H.R. 3615 and, if they wished, to change their votes with respect to the conversion. In addition, any persons who had submitted stock orders were given until December 24, 1993 to revoke, decrease or increase the amount of their stock orders.

Our conversion from mutual to stock form was overwhelmingly approved by our members. Sixty-five percent (65%) of the votes entitled to be cast at our Special Meeting were cast in favor of our conversion. Only 5% of the votes entitled to be cast were cast against the conversion (30% of the votes entitled to be cast were not cast). As a result, of the votes cast either for or against the conversion, approximately 93% were in favor of our conversion.

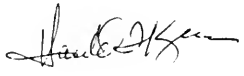
Our initial public offering of stock was also a success. The updated appraisal filed in connection with our conversion indicated the appraised value of Kenly Savings was $8,089,630. Eight hundred eight thousand nine hundred and sixty-three shares were sold in the conversion for $10.00 per share. The orders of all of our subscribers in the offering were filled in full.

We believe that our conversion to stock form has truly been a success in every way. Our capital has been increased by approximately $7.2 million, and our customers (the vast majority of whom are local residents) have become the owners of the Holding Company and now have the ability to share in the profits of Kenly Savings as shareholders.

However, we continue to be troubled by House Resolution 3615. As drafted, the bill states that no mutual savings bank may convert to the stock form of ownership on or after November 22, 1993 except in accordance with FDIC regulations which do not now exist. As was described above, Kenly Savings' conversion to stock form was well underway on November 22, 1993. Our Plan of Conversion had been approved by our directors and publicly announced in July 1993. Prior to November 22, 1993, we had incurred expenses in the hundred of thousands of dollars for accountants, financial advisors, attorneys, securities dealers, financial printers and others in connection with our conversion. Prior to such date, our regulator, the North Carolina Administrator, had reviewed our application to convert to stock form and had authorized us to proceed with our proxy solicitation and stock offering. Prior to such date, the Federal Reserve had approved the Holding Company's application.

Prior to such date, we had mailed our Proxy Statement to all of our members requesting their vote on our conversion and had mailed a Prospectus to our members and other prospective investors so that they could decide whether to exercise their subscription rights to purchase shares which would be offered in our conversion.

When H.R. 3615 was introduced, our board of directors had to decide whether to go forward with our transaction or to terminate our transaction even though the institution had incurred substantial costs in proceeding to that point. We believed that the only viable alternative was to make additional disclosures to our members and prospective purchasers and to continue with our transaction. It would be detrimental and unfair to Kenly Savings and its customers and to the investors who purchased in our Conversion if it was determined that H.R. 3615 applied retroactively to our conversion transaction. Therefore, we respectfully request that, if enacted, H.R. 3615 be amended to state that it "does not apply to any mutual to stock conversion pursuant to a plan of conversion which has been adopted by the board of directors of an insured state bank prior to November 22, 1993 if, prior to November 22, 1993, the applicable state regulatory authority has authorized the solicitation of proxies for the sale of securities pursuant to such plan of conversion.



WRITTEN TESTIMONY OF
MICHAEL C. MILLER, ASHEBORO, N.C.

SUBMITTED TO U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Mr. CHAIRMAN, MEMBER OF THE COMMITTEE, LADIES AND GENTLEMEN:

My name is Michael C. Miller. I am the President and CEO of FNB Corp. and First National Bank and Trust Company of Asheboro, North Carolina. FNB Corp. is the one-bank holding company for First National Bank, which was originally chartered in 1907, and has operated continuously since that time. (FNB Corp. and First National Bank and Trust Company will be referred to hereafter collectively as "FNB").

FNB is a true community banking organization, with just under $250 Million in assets. The geographic market for FNB consists of Randolph, Chatham and Montgomery Counties in central North Carolina. Our growth in this geographic area has largely been generated internally, with very modest acquisitions. The total of our acquisitions in the past consist of a $15 Million RTC branch purchase (Southeastern Savings Bank) and a small, single branch purchase ($5 million in deposits) from Southern National Bank. We have not been and do not intend to become a multi-billion dollar regional or even state-wide financial institution.

FNB for years as part of its "survival strategy" has been investigating relationships with small, healthy thrifts within our market. Only since 1989 has it been legal to acquire healthy thrift organizations. FNB currently has entered into conversion acquisition agreements with two small savings institutions, one with $44 Million in assets and eleven total employees, and another with $17 Million in assets and three employees. We have been working on these acquisitions for a number of months in one case and for over 7 years in the other. H. R. 3615 now jeopardizes these years of effort and planning.

FNB presents a different picture from the usual thrift acquirer. Our size provides certain competitive advantages over "chain banks," but also presents real challenges to keep up technologically and product-wise. We do not share the same economies of scale and cost structure, and for our survival must depend upon better service and increased familiarity with our customers. We share these attributes with the small thrifts with which we now have acquisition agreements. These small thrifts also present different pictures from many larger thrifts which have accomplished "stand-alone conversions" or which have been acquired by larger banks. They have done extraordinarily well, considering the burdens regulation for institutions their size.

Both of the institutions which we propose to join with are in stark contrast to larger, potentially self-sustaining institutions which have the size and resources to handle the market and regulatory burdens imposed upon today's financial institutions. Product offerings by each of these institutions have been very limited. Benefits and compensation of officers and directors has been limited and even paltry compared to larger, full-service organizations. Each of these institutions with which FNB has agreements lacks the resources to enter into "straight conversion" transactions. While a straight conversion might facilitate change from mutual to stock ownership, the underlying pressures of the market (to increase products and services) and the burdens of regulation would only be exacerbated, given the institutions' size and personnel limitations. Under the circumstances, a business combination with a small, community financial institution such as FNB is the best alternative for a small thrift institution which wishes to remain close to its members and customers while becoming more competitive in product and service offerings.

The apparent genesis of H.R. 3615 is discontent by certain parties in response to conversion acquisitions which have been accomplished in various states, including North Carolina. H. R. 3615 would require that conversions of state-chartered institutions conform to OTS guidelines or regulations, in the same manner if the state-chartered institution were still subject to OTS oversight. One common complaint of the current system pertains to benefits received by insiders of the selling thrift. Placing state transactions under OTS guidelines will restrict the benefits received by managers and directors of acquired thrifts, however even the members who now complain will be similarly stripped of most of their benefits as well. Benefits to depositors who don't choose to purchase stock risk being completely removed. The legislation as currently

written does not solve problems currently espoused by dissident members of acquired thrifts. The rights and privileges of members (who are described as "owners" in the North Carolina General Statutes) have not been improved under the proposed legislation, but the benefits received by them in conversion acquisition transactions will be significantly reduced.

The regulation of acquisition of state chartered institutions is better handled at the state level, where the relative benefits to the depositor, director, management, and community constituencies can be closely and more accurately measured and monitored. Additionally, the requirement that members vote on and approve acquisition conversions will best determine whether the transactions are fair and just. It is the members residing in the small communities and preferring to continue a relationship with a small, community based financial institution, and not federal authorities, who should be able to decide the merits of our proposed acquisitions.

The proper role for federal authorities lies in the areas of safety and soundness of federally chartered institutions and on wide-ranging issues of discrimination and/or consumer protection. Any safety and soundness aspects or issue which might be raised under conversion acquisitions are already adequately regulated by the SEC, the Federal Reserve Bank (for bank holding companies), and the State Savings Institutions Commissioner. Regulation of corporate governance issues that do not carry safety and soundness implications is better left to the individual states and to the individual members or owners of corporate entities (such as savings institutions) who may be affected.

My chief reason to raise these issues on behalf of FNB is to demonstrate that the concern over the proposed legislation lies not just with large, state-wide, regional or super-regional banking organizations. Small, community based financial institution acquirers such as FNB who primarily wish to improve their chances for survival by strengthening their position within existing markets should not be impeded by unnecessary legislation, no matter how well intentioned. Likewise, small thrift institutions who do not wish to "throw their lot" in with mega-banks feel very strongly that their options and their ability to affiliate with community institutions should be determined and judged by their own members with approval of state regulators, and not controlled strictly by federal agencies that have limited authority over their operation.

Thank you for your time and consideration.

Michael C. Miller
President and CEO
FNB Corp./First National Bank and Trust Company
P. O. Box 1328
Asheboro, N. C. 27204
(910) 626-8300

EDWIN PATE BAILEY
Post Office Box 20389
Raleigh, North Carolina 27619-0389
919-787-8880

January 26, 1994

Ms. Heidi Thomas, Esq.
Financial Institutions Subcommittee
212 O'Neill House Office Building
Washington, DC 20515

RE: *Written Comments Regarding Merger/Conversions Of North Carolina State Savings Banks*

Dear Ms. Thomas:

I am an attorney in North Carolina and recently represented a number of dissident members of Scotland Savings Bank, a North Carolina mutual savings bank, in opposing a proposed simultaneous conversion to a stock owned institution and merger with Branch Banking and Trust, a state chartered bank ("BB&T"). As of this writing, the Board of Directors of Scotland Savings Bank ("Scotland") and BB&T have issued a joint press release terminating the proposed merger and announcing an end to the conversion/merger process. As a result of my representation of members of Scotland, I had an occasion to become familiar with some of the North Carolina statutes, rules and regulations applicable to State savings banks and found them to be very lacking in protection of the members' interest. I was unable to attend the congressional hearings held by the Financial Institutions Subcommittee in Winston-Salem on January 20, 1994 as that was the same date as Scotland's annual meeting and my presence there was necessary. Accordingly, I offer this letter in support of the need for additional regulation in this area. I want to point out that this is a personal letter and that the opinions expressed herein are not necessarily those of my former clients at Scotland nor those of any other member of my firm or the firm itself. They are simply my personal observations.

The current North Carolina statutes, rules and regulations relevant to mutual owned savings and loans and savings banks are out of step with the current environment for financial institutions and afford little or no protection for the member depositors. While

North Carolina law provides that a mutual institution is actually owned by its depositors, those depositors have little or nor ability to influence the direction or management of the institution, much less control it. Current regulations allow the directors to adopt bylaws without submitting them to members and to amend or repeal them at any time without notice. In addition, directors of mutual institutions are allowed to hold general proxies from the members which have no set expiration date and authorize a majority of the board of directors to vote the members' votes at any and all meetings unless and until such general proxies are revoked in writing by the member. As a general rule, these proxies are solicited from members when they first open accounts. In addition, they are handed to members without explanation when they are conducting banking transactions within several weeks of the annual meetings. By way of the general proxies, the directors control a significant majority of the votes and thus are able to perpetuate themselves in office and otherwise manage the institution without much, if any, interference from the members whom they are elected to serve.

The problems resulting from the general proxy are further exacerbated by the fact that as a general rule, a list of the depositors of a savings bank is considered confidential information and, under current regulations, cannot be obtained by other members. Accordingly, a group of dissident members has little or no way to mount a proxy fight or even obtain a significant number of member revocations of general proxies. Further, notices of members meetings are not mailed to members. The institution is only required to run an ad in the local newspaper twice and post a notice at the bank's offices. The required notice is only a general one and does not identify the nominees for any current board seats or even state the number of seats up for election. Consequently, the directors usually perpetuate themselves in office and tend to become somewhat insensitive to the interests and needs of the members whom they are elected to represent and who are the actual owners of the institution.

An example of directors' proprietary attitude regarding mutual institutions can be seen in the spate of simultaneous conversion/mergers which have taken place in North Carolina in recent years. Examples include Graham Savings Bank, Forest City Savings Bank and the Albemarle Savings Bank. In a North Carolina conversion/merger, a mutual institution converts to stock ownership, all of the converted bank's stock is issued to an acquiring bank or bank holding company which in turn agrees to issue its own stock in an amount equal to the appraised value of the converted savings bank. The net effect of this transaction is that the acquiring bank gets the assets of the converted bank for free and then offers the former members and owners of that savings bank the opportunity to pay the acquiring bank for taking the converted bank off of their hands by virtue of purchasing the acquiring bank's stock at a discount to the market, typically 15%. If the converted savings bank has a net worth of $10 million, the acquiring bank obtains that net worth at no charge while the depositors/members whose funds have been used over the years to amass the $10 million net worth get nothing but the opportunity to pay the acquiring bank to take their

assets. As a by-product of these transactions, the directors of the converted bank typically receive substantial compensation in the form of stock options, stock awards, employment contracts for future service on the converted bank's advisory board, etc. Although the members are notified of these transactions and have the right to vote for or against them in member meetings, that right is of minimal value in light of the general proxy problem discussed above and the regulations which effectively prohibit members from mounting successful proxy fights. Something needs to be done.

Although the current statutes and regulations in North Carolina state that conversion/mergers must be fair to all members of the institution, the Savings Institutions Division, the North Carolina agency in charge of reviewing these plans, has typically approved plans such as those outlined above leaving the impression that either they consider such plans to be fair or they are not doing their job. In any event, I do not believe such plans are in any way, form or fashion fair. Although many directors of these institutions have served many years and done outstanding jobs, they have been compensated for that service. Directors have no higher degree of ownership than any other member of the institution and should not receive one dime of compensation more than any other member. To date, that has certainly not been the case in North Carolina. Under the current bill sponsored by Representatives Gonzales and Neal, I urge that regulations be adopted which outlaw the use of general proxies in all business matters before an institution when a quorum is in fact present. Quorums are typically low such as 25 members and that aspect should remain unchanged. In addition, mutual members should be given some of the protections afforded shareholders in corporations including the exclusive ability to adopt and amend bylaws other than routine "housekeeping" bylaws. Any compensation received for the sale of the institution itself should be allocated on a fair basis among all the members.

Although North Carolina case law has held that a mutual member's ownership in the institution is something less than the traditional ownership of a shareholder in a corporation, I submit to you that it should not be different. If a corporation is dissolved, shareholders receive whatever value is left after settlement of all liabilities. Likewise, in a mutual institution, if that institution is dissolved, the net worth of the institution over and above its liabilities is distributed pro rata to the members on the basis of the amount of their deposits in that institution. Mutual institutions have charters, bylaws, directors, annual meetings and all the trappings of corporations. The only difference is that they do not have stock. The members' deposits are treated like stock and their voting power is based on the quantity of their deposits. I find little or no distinction between a shareholder and a member of a mutual financial institution. Surely if a corporation were sold and the directors failed to obtain fair market value for the corporation and, whatever value was received went solely to the directors, no one would question whether that transaction was improper. Yet, the North Carolina Savings Institutions Division has allowed and in fact authorized the same type of transaction a number of times regarding mutual financial institutions. Although I am not a big fan of federal government regulation, the members of these mutual institutions

need protection. Apparently the State of North Carolina is not providing that protection so I now urge the U. S. Congress to do so.

Attached hereto is a copy of the Objection I filed on behalf of dissident members of Scotland Savings Bank in opposition to their bank's application to conduct a simultaneous conversion/merger. Scotland's plan was very similar to that of other proposed conversion/mergers in recent years and some of the problems are discussed in the Objection. Scotland's members opposed this plan in a very vocal manner and, to their credit, Scotland's directors reconsidered their position and agreed to terminate the merger. Such noble and responsive action by savings bank directors unfortunately has been the exception rather than the rule in North Carolina and I personally am appreciative of Scotland's directors taking this step. The bill introduced by Representative Neal and Gonzales was an admitted factor in Scotland's decision to abandon this merger and the Scotland members and I thank you for your efforts in that regard.

If you have any questions regarding this matter or need further information, I will be happy to assist you to the extent I am able. Again I want to stress that the opinions in this letter are mine and mine alone and do not and are not intended to represent the opinions of any of my clients, my law firm or anyone else.

With kind regards, I am

Yours truly,

Edwin Pate Bailey

EPB/kak
Enclosure

kak/EPB45/WP51/Heidi

TO: Honorable Stephan L. Neal, Chairman
Subcommittee on Financial Institutions, Supervision, Regulation and Deposit Insurance
House Banking Committee
300 New Jersey Avenue SE Room 212
Washington, DC 20515

SUBJECT: H. R. 3615

PURPOSE: To seek relief from the bill by changing it to read "does not apply to any mutual to stock conversion pursuant to a plan of conversion which has been adopted by the board of directors of an insured state bank prior to November 22, 1993 if prior to November 22, 1993, the applicable state regulatory authority has authorized the solicitation of proxies for the sale of securities pursuant to such plan of conversion."

FROM: Board of Directors
First Savings Bank of Moore County, SSB
Southern Pines, North Carolina

DATE: January 20, 1994

The directors, officers, employees, customers and shareholders of First Savings have a substantial interest in House Resolution 3615 because, when it was introduced on November 22, 1993, First Savings had previously begun a proxy solicitation and an initial public offering of its securities in connection with its conversion from a North Carolina-chartered mutual savings bank to a North Carolina-chartered stock savings bank. Our conversion from mutual to stock form, which did not involve a merger or acquisition by another financial institution, was completed on January 6, 1994.

The home office of First Savings is in Southern Pines, North Carolina, but First Savings also has branch offices in Southern Pines, Pinehurst, West End and Carthage. We pride ourselves in being the "hometown bank" for Moore County. In fact, as of June 30, 1992, First Savings had more of Moore County's deposits (22.8%) than any other financial institution.

First Savings is one of the most highly capitalized savings institutions in the country. Before our conversion to stock form, on June 30, 1993, First Savings had total assets of approximately $226.6 million and net loans of $140 million. As of June 30, 1993, First Savings had FDIC Tier 1 capital of over $26 million, or 11.7% of its regulatory assets (as compared to the requirement estimated to be 4%), and FDIC risk-based capital of $26.7 million, or 29.75% of regulatory

assets (as compared to the requirement of 8%). As a result of our conversion, we have acquired $34.9 million in additional capital.

Several months ago, First Savings' board of directors began considering a conversion from mutual to the stock form of ownership. During our consideration of this issue, First Savings retained the services of financial advisors, accountants and attorneys who had vast experience in advising savings institutions regarding various regulatory and operational matters. Our board of directors was of the opinion that our capital position would be strengthened even more if we converted to the form of ownership used by the vast majority of other financial institutions. In addition, by converting to the stock form of ownership, we could obtain access to the capital markets in the future and would be able to offer our employees stock-based incentive compensation programs. In addition, we would be able to offer our members, our depositors and borrowers, the right to become owners of First Savings through the purchase of capital stock which would be issued in the conversion. As a result, on July 29, 1993, almost four months before H. R. 3615, our board of directors unanimously adopted a Plan of Conversion pursuant to which First Savings would convert from a North Carolina-charted mutual savings bank to a North Carolina-chartered savings bank in stock form. On August 2, 1993, pursuant to North Carolina regulations, we made a public announcement of our plan to convert from the mutual to the stock form of ownership.

First Savings then set about to obtain the necessary approvals and take the other actions which are required in order to convert from a mutual savings bank to a savings bank in stock form. Because our primary regulator was the Administrator of the Savings Institutions Division, North Carolina Department of Commerce (the "North Carolina Administrator"), our conversion was governed by regulations which have been adopted by the North Carolina Administrator. These North Carolina regulations are virtually identical to the regulations which have been promulgated by the Office of Thrift Supervision and which are applied in connection with the mutual to stock conversions of federally-chartered institutions.

Over a period of several months, First Savings and its attorneys, accountants and advisors drafted a comprehensive Offering Circular describing its proposed securities offering and a detailed Proxy Statement describing the matters to be considered at the Special Meeting of our members called to vote on our Plan of Conversion (the "Special

Meeting"). On November 1, 1993, First Savings filed with the Federal Deposit Insurance Corporation a Registration Statement on Form F-1, the purpose of which was to register the securities to be sold in our conversion under the Securities Exchange Act of 1934. On November 3, 1993, we filed with the North Carolina Administrator our Application to Convert a Mutual Savings Bank into a Stock Owned Savings Bank. This Application and the Registration Statement on Form F-1 contained, among numerous other items, copies of the proposed Offering Circular and Proxy Statement which would be distributed to our members, depositors and borrowers who, in accordance with applicable regulations, would be given an opportunity to (i) vote on whether our Plan of Conversion should be approved and (ii) decide whether they wished to exercise their subscription rights and purchase shares of First Savings' common stock which would be issued in its conversion.

Our appraiser filed its appraisal with the North Carolina Administrator stating that the appraised value of First Savings ranged from $28,500,000 to $37,950,000, with a mid-point of $33,000,000. As a result, in our conversion, in accordance with applicable regulations, we offered to the public a minimum of 2,850,000 shares and a maximum of 3,795,000 shares at $10.00 per share.

The North Carolina Administrator reviewed our application to convert to stock form and authorized us to distribute our proxy solicitation and offering materials by letter dated November 12, 1993. Our Special Meeting to vote on our conversion was called for December 16, 1993. Our Offering Circular and other offering materials and our Proxy Statement with respect to our Special Meeting were mailed to our members on November 16, 1993. Immediately thereafter we began receiving stock orders from our members and proxy cards with respect to the vote to approve our conversion. On November 22, 1993, after our conversion had been approved by our Board of Directors and publicly announced, after we had incurred hundreds of thousands in expenses related to our conversion, after our conversion had been approved by the North Carolina Administrator and after our Offering Circular and Proxy Statement had been distributed, H. R. 3615 was introduced in Congress.

As a result of the introduction of H. R. 3615, we decided to distribute a Supplement to our Offering Circular and Proxy Statement to all of our members entitled to vote on the conversion and entitled to purchase shares of common stock. This supplement described, as best we could, H. R. 3615 and the issues raised by the introduction of that Bill.

The Supplement was mailed to our members and prospective investors on December 16, 1993, and our Special Meeting originally scheduled for December 16, 1993 was adjourned until December 28, 1993, in order to give members a sufficient opportunity to consider the implications of H. R. 3615 and, if they wished, to change their votes with respect to the conversion. In addition, any persons who had submitted stock orders were given until December 28, 1993, to revoke, decrease or increase the amount of their stock orders.

Our conversion from mutual to stock form was overwhelmingly approved by our members. Eighty-two percent (82%) of the votes entitled to be cast at our Special Meeting were cast in favor of our conversion. Only 2% of the votes entitled to be case were cast against the conversion (16% of the votes entitled to be cast were not cast). As a result, of the votes cast either for or against the conversion, over 97% were in favor of our conversion. All of the proxies voted were special proxies submitted specifically for the conversion. No general proxies were used.

Our initial public offering of stock was also a tremendous success. The updated appraisal filed in connection with our conversion indicated that the appraised value of First Savings was $36,000,000. Three million six hundred thousand shares were sold in the conversion for $10.00 per share. All of the shares sold were purchased by our depositors and by the Employee Stock Ownership Plan for First Savings, which purchased 2% of the shares issued.

We believe that our conversion to stock form has truly been a success in every way. The capital of the institution has been increased by approximately $34.9 million, and our customers (the vast majority of whom are local residents) have become the owners of First Savings and now have the ability to share in the profits of First Savings as stockholders.

However, we continue to be troubled by House Resolution 3615. As drafted, the bill states that no mutual savings bank may convert to the stock form of ownership on or after November 22, 1993 except in accordance with FDIC regulations which do not now exist. As was described above, First Savings' conversion to stock form was well underway on November 22, 1993. Our Plan of Conversion had been approved by our directors and publicly announced during the summer of 1993. Prior to November 22, 1993, we had incurred expenses in the hundreds of thousands of dollars for attorneys, accountants, financial advisors, securities dealers, financial printers and others in connection with our

conversion. Prior to such date, our regulator, the North Carolina Administrator, had reviewed our application to convert to stock form and had authorized us to proceed with our proxy solicitation and stock offering. Prior to such date, we had mailed our Proxy Statement to all of our members requesting their vote on our conversion and had mailed an Offering Circular to our members and other prospective investors so that they could decide whether to exercise their subscription rights to purchase shares which would be offered in our conversion.

When H. R. 3615 was introduced, our board of directors had to decide whether to go forward with our transaction or to terminate our transaction even though the institution had incurred substantial costs in proceeding to that point. We believed that the only viable alternative was to make additional disclosures to our members and prospective purchasers and to continue with our transaction. It would be detrimental and unfair to First Savings, our customers and our investors if it was determined that H. R. 3615 applied retroactively to our conversion transaction. Therefore, we respectfully request that, if enacted, H. R. 3615 be amended to state that it "does not apply to any mutual to stock conversion pursuant to a plan of conversion which has been adopted by the board of directors of an insured state bank prior to November 22, 1993 if, prior to November 22, 1993, the applicable state regulatory authority has authorized the solicitation of proxies for the sale of securities pursuant to such plan of conversion."

Respectfully submitted,

William E. Samuels

William E. Samuels, Executive Vice President
Chief Executive Officer
First Savings Bank of Moore County, SSB

ACQUIROR CONVERSIONS

By

Ronald D. Raxter

Ward and Smith, P.A.
Two Hannover Square, Suite 2400
Post Office Box 2091
Raleigh, North Carolina 27602-2091
(919) 836-1800

EXECUTIVE SUMMARY

The purpose of this document is to accurately describe the regulation of mutual-to-stock conversions by North Carolina mutual savings banks in which the resulting stock savings bank is immediately acquired by an existing holding company. In North Carolina, the resulting stock savings bank may be retained as a separate subsidiary ("conversion/acquisition") or merged into a commercial bank subsidiary ("merger/conversion"). For purposes of this document, both types of acquisitions will be referred to as acquiror conversions.

While there are numerous issues that are raised by mutual-to-stock conversions, there are four dominant issues:

1. Acquiror conversions are authorized by Office of Thrift Supervision ("OTS") regulations and those courts that have been asked to review conversions have concluded that conversions do not deprive depositors of any rights.

2. Acquiror conversions under North Carolina law and regulation are subject to appropriate review and limits on insider participation and are substantially similar to the OTS regulations.

3. Acquiror conversions in North Carolina are subject to appropriate federal review.

4. Depositors in North Carolina have received benefits from savings bank acquiror conversions that are not permitted under OTS policies.

INTRODUCTION

From April 1, 1993 to November 31, 1993, six North Carolina savings banks have been acquired in mutual-to-stock conversions where the stock sold to depositors of the mutual was stock of existing holding companies, not stock of the savings bank. These acquiror conversions were conducted under North Carolina law and regulation, not under the regulations or policies of the federal regulator of savings and loans, the OTS.

These acquiror conversions have been the subject of extensive, and frequently incorrect or misleading, articles in the business and popular press. The intent of this document is to describe, accurately, the legal and business reasons for these transactions and to correct many of the misconceptions and untruths that have been directed at these business combinations.

I. Acquiror conversions are permitted under federal and state regulations which have been upheld by federal court review.

OTS regulations specifically authorize mutual to stock conversions where the resulting institution is acquired by an existing holding company (563b.10(a)) and where the resulting institution is merged with a subsidiary of the existing holding company (563b.10(b)). In fact, from 1989 to 1993, ten federal and state mutual thrifts were acquired by North Carolina holding companies pursuant to OTS regulations.

The acquisition of Gate City Federal Savings and Loan Association ("Gate City") was challenged by depositors arguing (1) that the regulations authorizing the conversions deprived the depositors of property rights without adequate compensation and (2) even if the regulations were constitutional, the OTS' decision approving the transaction was improper. The Fourth Circuit summarily rejected the claims citing, among other cases, York v. Federal Home Loan Bank board 624 F2d.495 (4th Cir. 1980), cert. denied, 449 US, 1043 (1980).

York dismissed the depositor's claims regarding ownership as follows:

> "Although the depositors are the legal "owners" of a mutual savings and loan association, their interest is essentially that of creditors of the association and the only secondarily as equity owners. Depositors' rights are circumscribed by statute and regulation.
>
> They are not allowed to realize or share in profits of the association, but are entitled only to an established rate of interest. The depositors do not share in the risk of loss since their deposits are federally insured, and their only opportunity to realize a gain of any kind would be in the event the savings and loan association dissolved or liquidated. As to this remote possibility the Supreme Court stated:
>
> > If a depositor withdraws from the bank, he receives only his deposits and interest. If he continues, his only chance of getting anything more would be in the unlikely event of a solvent liquidation, a possibility that hardly arises to the level of an expectancy. It stretches the imagination very far to attribute any real value to such a remote contingency, and when coupled with the fact that it represents nothing

> which the depositor can readily transfer, any theoretical value reduces almost to the vanishing point.

Society for Sav. v. Bowers, 349 U.S. 143, 150, 75 S.Ct. 607, 611, 99 L.Ed. 950 (1955). In fact, federal regulations prohibit savings and loans from dissolving without Bank Board approval, and no solvent association has ever secured approval for dissolution. Thus, it is apparent that depositors will not be deprived of property rights by conversion to a federal stock organization. Depositors' only actual rights, the rights as creditors of the association, will remain unchanged by the conversion."

The North Carolina conversion regulations permitting acquiror conversions are substantially similar to those of the OTS. See 4 NCAC 16G.1203 and .1204.

II. Conversions under North Carolina law are subject to appropriate review and limits on insider participation.

A. The regulatory limits on insider participation are substantially similar to the OTS regulatory limits.

OTS regulations (5630.3(c)(8)) permit a sliding scale of between 25-35% of the offering to be taken by officers and directors. Up to 10% of the offering can be taken by any one officer or director (563b.3(d),(4)). North Carolina regulations do not establish an aggregate limit on officer and director participation but no one officer or director can purchase more than 5% of the offering (4 NCAC 16G.0311(7)).

B. The value of the converting savings bank must be established by an independent qualified appraiser.

The North Carolina regulation requiring an independent qualified appraiser to determine the value of the converting savings bank (4 NCAC 16G.0717) is virtually identical to the OTS regulation (563b.7(f)).

C. All benefits to insiders must be fully and fairly disclosed.

North Carolina General Statute 54C-33(d) requires all converting savings banks to give notice to all members and full and fair disclosure of the substance of each transaction.

D. The NC Administrator must review the proxy material describing the transaction.

North Carolina regulation (4 NCAC 16G.0570) requires that the proxy material describing the transaction be approved by the NC Administrator prior to the proxy material being mailed to the members.

E. The transaction must be fair and equitable with no person receiving inequitable gain or advantage.

North Carolina General Statute 54C-33(C)(3) requires the NC Administrator to determine that the transaction is fair and equitable with no "person" (the statute does not use "depositor") receiving an inequitable gain or advantage in order for the NC Administrator to approve the transaction for submission to a vote by the members.

F. The conversion must be approved by a vote of a majority of all eligible members.

North Carolina General Statute 54C-33(d) requires that a majority of all eligible members must approve the conversion. The OTS regulation (563b.6(e)) has the identical vote requirement.

G. All conversions "sell" at less than pro forma book value.

Both OTS regulations (563b.7(c)) and North Carolina regulations (11 NCAC G.0714) require that the estimated price of the stock sold in any mutual to stock conversion be based on the appraisal of the institution, not on the pro forma book value of the institution. Therefore, the depositors in a standard conversion who have the financial ability to buy stock of the converting institution, even under OTS regulations, buy that stock at a substantial discount from pro forma book value. Depositors who do not have the financial ability to buy the stock get nothing in a standard conversion.

III. There is appropriate federal review of acquiror conversions.

A. The Federal Reserve Board must approve all acquiror conversions.

All of the acquiror conversions in North Carolina to date have been by existing bank holding companies. Section 3(a) of the Bank Holding Company Act of 1956, as amended, requires the prior approval of the Federal Reserve Board for any bank holding company to acquire voting shares of a state savings bank.

B. The Securities and Exchange Commission ("SEC") must approve the stock offering documents and generally reviews the proxy statements.

The offering of the holding company common stock in an acquiror conversion is subject to the Securities Act of 1933. Therefore, the documents offering the stock to the members of the mutual savings bank must be declared effective by the SEC. In most instances, the holding company combines the prospectus for the sale of the stock and the proxy statement required by North Carolina law into one document. Therefore, the SEC has reviewed the required disclosure of the benefits to insiders.

C. Benefits to officers of a savings bank in an acquiror conversion are subject to the Internal Revenue Code's golden parachute rules.

An acquiror conversion constitutes a change in control of the mutual savings bank. Therefore, payments to officers of the savings bank are subject to Section 280G of the Internal Revenue Code and excessive payments may result in the imposition of excise taxes on the recipient and denial of a deduction to the acquiror for the parachute payment.

D. The FDIC must approve the merger with the commercial bank subsidiary in a merger conversion.

Section 18 of the Federal Deposit Insurance Corporation Act requires the prior approval of the FDIC in order for a savings bank to be merged into a commercial bank.

E. FDIC review of the corporate transactions in an acquiror conversion is inconsistent with their safety and soundness role in the dual banking system.

The FDIC has historically viewed its role in the dual banking system as the protector of the deposit insurance fund. No commentator has yet alleged that raising substantial amounts of additional equity can be viewed as a safety and soundness issue. The FDIC has historically looked to state law and state regulators to supervise the corporate operation of state chartered banks and savings banks. Unless it can be demonstrated that benefits to officers, directors and employees in acquiror conversions result in unsafe and unsound banks or holding companies, there is no compelling reason to undermine the dual banking system by inserting the FDIC into the corporate governance of the state banking system.

IV. Mutual savings bank members have received benefits from acquiror conversions that are not permitted under OTS policies.

A. OTS policies, not regulations, have established arbitrary limits on benefits to officers, directors, employees and members.

The OTS restrictions on the permissible corporate activities in an acquiror conversion, with the exception of limits on

executive salaries, are imposed without the benefit of any rulemaking or foundation in any existing OTS regulation.

B. Members of North Carolina savings banks are able to buy holding company stock at a substantial discount over the allowed OTS discount.

To date, OTS policies have set the permissible discount on the purchase of holding company stock in an acquiror conversion at 5%. North Carolina holding companies have offered their stock to mutual members at up to a 15% discount.

C. Members of North Carolina savings banks have received bonus interest payments of up to 2¼% on their account balances.

To date, it is unclear what policy the OTS would invoke if a bonus interest payment were offered in an acquiror conversion. However, the "free-market" in North Carolina has resulted in members of North Carolina mutual savings banks receiving up to a 2¼% interest bonus on their account balances.

D. Former members of North Carolina savings banks benefit from substantial charitable donations for community projects or low and moderate income housing loans.

To date, it is unclear what policy the OTS would invoke if substantial charitable donations were offered in an acquiror conversion. However, the "free market" in North Carolina has resulted in the communities in which the converting savings bank is located receiving charitable donations of up to $2 million. Since conversion regulations provide that members are determined as of a certain date, many community residents who may have once been members of a mutual savings bank receive no other tangible reward from a standard or an acquiror conversion. Some holding company acquirors have also dedicated funds specifically to provide low and moderate income housing loans with relaxed underwriting standards.

E. Employee members receive significant retirement benefits.

It is unclear what policy the OTS would adopt with respect to employees of mutual savings institutions, all of whom generally are also members, receiving payout of their existing retirement plans and credit from date of hire under the acquiror's retirement plan. To date, the OTS has only allowed establishment of an ESOP. The "free market" in North Carolina has included both ESOPs and payout of existing retirement plans and credit for the employees under the acquiror's retirement plan.

F. Benefits to officers and directors have been commensurate with the risks they took on behalf of the membership.

Officers and directors, who must also be members under North Carolina law (NCGS 54C - 101(c)), put their personal assets at risk in order to manage the affairs of the savings bank on behalf of the members who elected the directors to office. Any examination of the list of failed institutions demonstrates that this risk was substantial. Directors' fees for such service were substantially lower than comparable fees for service on a commercial bank board of directors. Stock and option grants for such service upon a change in control of the savings bank should be established by negotiation with the acquiror, not by federal regulation. The acquiror, i.e. the market, should determine the value that the officers and directors have built in the savings bank. Uniform federal regulations will only distort market values and may force institutions to take risks that may result in failed institutions if interest rates again become erratic and stock market values plunge.

G. Depositors of all types, not just depositors with the financial ability to buy stock, have benefited from the "free market" in North Carolina.

Standard conversions, as established by OTS regulations, essentially give the accumulated net worth of a mutual savings institution only to those depositors who have the financial ability to buy the stock offered in the conversion. Acquiror conversions, as allowed to develop under the "free-market" in North Carolina, have distributed the accumulated net worth of a mutual savings bank to all the "persons" who have contributed to that net worth. The community receives substantial charitable donations and low and moderate income housing funds, the employee members receive substantial retirement fund increases, all depositors receive interest rate bonuses, depositors with the financial ability to buy stock receive that right at up to a 15% discount as opposed to the 5% discount the OTS permits, and officers and directors are rewarded for their successful stewardship of a solvent savings bank.

All depositors have received benefits that have not been permitted under OTS policies. While officers and directors have received benefits that OTS policy would not permit, there has been no demonstration that these benefits have been at the expense of benefits the depositors receive. In fact, any analysis of an acquiror conversion under OTS policy clearly demonstrates that an acquiror conversion under North Carolina law results in more tangible rewards to all depositors. The acquiror actually takes more of the value of a mutual savings institution under OTS policy than it now can under the "free-market" that has developed in North Carolina. These innovations are a direct result of the flexibility and innovation of the dual banking system.

CONCLUSION

While the conversion regulations of North Carolina are substantially similar to those of the OTS, the North Carolina Administrator has not attempted to impose policies that restrict the corporate operation of acquiror conversions within the parameters established by published regulations. The result has been exactly what a "free market" is meant to establish: all interested persons in an acquiror-conversion have benefited.

Much of the criticism of these transactions has been a result of the required full and fair disclosure of all the tangible benefits that result from an acquiror conversion. The democratic vote that North Carolina law mandates in order to approve an acquiror conversion has resulted in a more equitable distribution of those tangible benefits.

There is no evidence that any safety and soundness concerns arise from an acquiror conversion. There has been an implication by some commentators, many of whom may have an economic interest in discouraging acquiror conversions, that officers and directors benefit at the expense of their fellow members. However, the members of the mutual savings banks that have converted to date have clearly demonstrated that they have the ability to consider and debate the issue of their corporate governance, including officer and director compensation.

There is no clear and convincing evidence that the federal government needs to intervene in the democratic, free market process of acquiror conversions in North Carolina, the operation of North Carolina law or the corporate governance of North Carolina mutual savings banks.

12/10/93
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RLMAIN\2520.

January 20, 1994

Congressman Stephen L. Neal
2469 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Neal:

I regret that I was unable to speak at the congressional hearing held in Winston-Salem, N. C. on this date, January 20, 1994, concerning the legislation you have co-sponsored to limit the amount that officers and directors can receive in merger-conversions like the one in which Citizens Savings Bank of Mooresville, N. C. was recently acquired by BB&T. As a depositor in Citizens Savings, I feel that the directors took advantage of the trust placed in them by the depositors in the manner in which they solicited proxies to be voted for the merger-conversion. It seems clear to me that the directors were in a position of conflict of interest and pursued a plan which served their interests rather than those of the depositors they represented.

The Board of Directors of Citizens Savings Bank of Mooresville voted the proxies they had solicited from the depositors at a meeting on December 23, 1993 in approval of a merger-conversion with BB&T. A motion was made and seconded at that meeting to postpone the meeting and vote for one month to allow those of us who appeared at the meeting to oppose the merger-conversion time to inform the depositors of the benefits to be derived by the directors. We pointed out that the directors had failed to inform the depositors of the benefits they were to receive and we wanted time to let the depositors hear the whole story. The directors voted the proxies to defeat the motion to postpone the meeting and then proceeded to vote the proxies in favor of the merger-conversion.

I have talked to a number of depositors who, at the urging of the directors, marked their proxies in favor of the merger-conversion and turned them over to the directors. Not a single depositor with whom I have talked had any idea that the directors were going to get approximately a quarter of a million dollars apiece out of the merger-conversion. Needless to say, these depositors had not taken the time to try to decipher the prospectus; they chose instead to follow the advice of the men they trusted and respected to do the right thing in the matter. I had initially done the same thing. Two directors who I have known nearly all my life talked to me about the merger-conversion and urged me to mark my proxies in favor of the proposal and turn them in. Neither of them said a single word about what they were getting out of the deal. I suspected nothing until I read of the bill you have co-sponsored and, at that time, which was on Friday, December 17, I began reading the prospectus. Shock and disbelief are the best descriptions of my reaction to what I learned in my reading of the prospectus. I know all of the directors, several of them very well. Until now, I have had no reason to believe that these men were other than honest and respected friends who would not dream of taking such outrageous advantage of a position of trust in our community.

My father was chairman of the board of Citizens Savings until his death six years ago. Through him, I was knowledgeable of the manner in which the board operated for many years. When I read the prospectus, I became aware that a significant shift in philosophy and policy occurred approximately three years ago. That shift entailed the establishment of a retirement plan that is, to me, unbelievable. For what appears to be an average contribution of about $25,000 over a five year period, seven of the directors will receive retirement benefits of an average of $2,427 per month for ten years beginning at age 65. The directors' contributions to their retirement plan consist of deferred compensation of approximately $5,000 per year for five years, which was made possible by their action to more than double their directors' fees in the past three years. Such a retirement plan for directors who attend an average of one meeting per month is unconscionable in a state in which a teacher who works full time for thirty years and contributes significantly more than $25,000 over that period will receive a monthly benefit significantly less than $2,427. When I confronted four of the directors with my concerns over their self-serving actions regarding the retirement plan and the undeserved benefits they were in line to receive from BB&T following the merger-conversion, I was met with a carefully rehearsed denial of any wrong-doing by three of them. The fourth director candidly told me that a shift had occurred in the way the board operated several years after my father's death and that the attorney for the N. C. association which represents the board had recommended such a shift in order for the directors to get into a better position to get a good deal from whichever bank might acquire Citizens Savings in a merger-conversion. This director told me that everything the directors and depositors would get out of the merger-conversion would come out of "undivided profits" in Citizens Savings, amounting to somewhere between four and five million dollars. I have since been informed that this is what is referred to as "retained income" in the balance sheet in the prospectus. The director said that if the directors didn't get this money, BB&T would, and this was his justification for the generous benefits he and the others were going to receive.

My understanding is that the N.C. law which permits merger-conversions allows directors and officers to receive up to fifteen percent of the purchase price in stock awards and other benefits. The prospectus indicates that the purchase price of Citizens Savings is approximately $6,000,000, but nowhere in the prospectus can I find where BB&T is paying anything for Citizens Savings. Instead, in the section of the prospectus dealing with the purchase price, the purchase referred to is the purchase by Citizens Savings depositors of approximately $6,000,000 in BB&T stock. The prospectus is full of what I regard as "double-talk" apparently intended to confuse the persons who read it. If I am correct and BB&T is not paying anything for Citizens Savings, why are the directors entitled to anything? Even if a case can be made for a purchase price of $6,000,000, the directors are clearly getting far more than fifteen percent of that amount. The directors claim that some of their benefits are for "future service" to BB&T on an advisory board. One of the benefits of future service is the retirement plan being provided by BB&T, yet the prospectus clearly states that two of the directors are eligible at this time to begin drawing their retirement benefits. This fact seems clearly to negate the notion of future service as a basis for some of the directors' benefits.

Based on my knowledge of the actions of the board of directors of Citizens Savings in years past, information contained in the prospectus, information given me by one board member, and information in the October issue of Business North Carolina, I have concluded that a situation has been deliberately created that amounts to an "open season" on mutual savings institutions in North Carolina. It appears that the N.C. regulatory department that oversees the "thrifts," the N.C. association that represents boards of directors, the banks like BB&T which have been leaders in merger-acquisitions, the individuals who proposed and secured passage of the legislation that was enacted in N.C. in 1992 which permits the abuses now occurring, and the members of the boards of directors themselves have conspired to legitimize the "looting" of the savings and loans.

In the case of Citizens Savings, there is evidence that the directors and BB&T anticipated problems if the depositors learned of the benefits the directors would receive if the merger-acquisition was approved. On November 4, 1993, the board of directors deleted a by-laws provision that provided for a removal of the directors by members (depositors). The prospectus indicates that BB&T has agreed to provide liability insurance for the directors in case any legal action is taken against them regarding the merger-conversion. The more I learn of the merger-conversion process, the clearer it becomes that those involved recognize that there is danger to the success of their efforts if depositors become fully informed about the benefits the directors are getting out of the process. From start to finish, the directors and BB&T have taken steps to make it difficult for depositors to learn all the facts and to protect themselves in the event that depositors do learn those facts. The term "conspiracy" seems appropriate in describing the actions of all parties involved in advocating merger-conversions.

As I have tried to understand my strong emotional reaction to the "acquisition" of Citizens Savings by BB&T in December, I have come to realize that I have experienced a deep and personal sense of loss of respect, trust, and confidence in a group of men in my community, some among them who have been good friends for many years. As I have talked with others here and in other communities in which similar merger-acquisitions have occurred or are proposed, I have sensed considerably more disappointment in the behavior of trusted members of the community than of concern over personal monetary loss. I believe that deep rifts have been created in many communities which may never heal. Hopefully, your proposed legislation will be enacted by Congress and the opportunity and temptation for boards of directors to behave unethically will be removed. I hope further that your hearings will make public the extent to which all parties involved have deliberately tried to prevent full disclosure of the benefits of merger-conversions to directors and officers.

Thank you for the opportunity to express my concerns and opinions.

Sincerely,

Jim M. Morrow

Jim M. Morrow, Ph.D.
718 S. Magnolia St.
Mooresville, NC 28115

Telephone: Day - (704) 227-7207
Evening - (704) 664-3486

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